MARYLAND

AS A PROPRIETARY PROVINCE

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MARYLAND

AS A

PROPRIETARY PROVINCE

BY

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The English subjects, who left their native country to settle in the wilderness of America, had the privileges of other Englishmen. They knew their value, and were desirous of having them perpetuated to their posterity.

— DULANY.

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PREFACE

Since the founding of Maryland, science has given man a wonderful mastery over the forces of nature, has so penetrated the crusts enveloping the religious thought of sects and nations, that man has been found to be the maker even of bibles; and while thus causing him to see himself as the centre of the universe, man has demanded the right to govern himself. In no other place upon this American continent is there to be found so good an example of a people who, after a struggle of nearly a century and a half, made the transition from a monarchical government to a "government of the people, for the people, and by the people" as in Maryland; and the attempt has been made in the following pages to enable the reader to enter into the experience of that people engaged in that struggle.

The charter, the constitutional basis of the government, was granted by a monarch who had unusually high notions concerning the divine right of kings. It bestowed on the lord proprietor the powers of an absolute monarch. For many years the province was too sparsely populated to admit of the development of a political life; but the sense of individual freedom was strong from the first, and was encouraged by disturbances from without until a successful revolt was effected. The revolt not only gave the people control of their branch of the legislature, but also extended the jurisdiction of the law-making body. An industrial development, a growth of social pressure,

and the immorality of the clergy then instigated the people's representatives to encroach on the lord proprietor's powers until they became supreme in nearly every department of the government.

The author has gathered the material for this book from original matter, of which the greater part exists only in manuscript; and although the leading facts have been found in the assembly journals and council records, yet the land office records, the more important wills, the *Maryland Gazette*, and numerous letters have been drawn upon in the effort to get nearer to the life of the people and thereby present the reader with a more lifelike picture.

The book has been written as a dissertation for the degree of Doctor of Philosophy in Columbia University, and the author desires to express his sense of obligation to the friends of the university as well as to those members of its faculty who have given him encouragement and assistance; but especially does he wish to acknowledge his indebtedness to Professor Herbert L. Osgood, at whose suggestion the work was undertaken and under whose guidance it has been carried on, for whatever measure of success has been attained.

Acknowledgment is also due to Drs. F. E. Sparks, B. C. Steiner, G. A. Leakin, and Mr. John Gatchell of the Maryland Historical Society, and Mr. L. H. Dielman of the State Library, for assistance in the search for material.

NEWTON D. MERENESS.

New York City,
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MARYLAND

AS A PROPRIETARY PROVINCE

INTRODUCTION

Long before the English made their earliest attempts to found colonies on the American continent, the right to the newly discovered regions of the globe had been divided by papal bulls between Spain and Portugal. Later, in the year 1580, Portugal, with all her possessions, was brought under the dominion of Philip II of Spain. This same Spanish king was at that time the head of the chief branch of the House of Hapsburg, which by a series of marriages had for some time been threatening to bring all Europe under its rule. Henry VII had tied England to Spain by the marriage bond. His son, Henry VIII, however, not only severed that bond, but also caused Parliament to declare the Church of England independent of the pope.

From the beginning of the reign of Elizabeth, daughter of Henry VIII, the relations between England and Spain became more and more hostile ; and while by papal bulls England and her merchants were denied the right of trading in the western seas, "silver" ships were unloading in Spanish ports the treasure taken by conquest and plunder from Mexico and Peru. It was under such conditions that the queen of England, first, silently approved of the piratical voyages of her most daring sea rovers, and, later, on the eve of war, commissioned a fleet under Sir Francis Drake to do all possible damage to the Spanish marine. It was under such conditions, also, that the queen, in

the year 1578, issued to Sir Humphrey Gilbert her first patent for colonization.

By this patent Gilbert was to become owner of all territory — not already possessed by a Christian prince in amity with England — which lay within two hundred leagues of any colony that, within the period of six years, he might plant, reserving to the crown but one-fifth part of all the gold and silver ore. With the ownership of the territory, Gilbert, his heirs and assigns, should enjoy the right of governing the colony by means of such laws and ordinances as he or they might make, provided these were not contrary to the laws of the mother country. After the lapse of six years without the founding of a colony, a like patent was issued to Sir Walter Raleigh, a man strongly bent on the destruction of the Spanish power. He, however, accomplished no more than the planting of an ephemeral colony on Roanoke Island.

But in the year 1588, two years before the expiration of Raleigh's patent, the great Spanish Armada was defeated by the English. After that event the Spanish power on the sea was so crippled that a considerable body of English merchants began to take the active interest in trade with the New World, which had hitherto been largely confined to the sea rover. Corporations were formed for planting colonies with the expectation that the returns in fish and peltries, if not in the precious metals, would make the undertaking a profitable one. As a result of this movement, a colony was soon founded in Virginia; and, later, others were founded in New England. But as neither gold nor silver was found, and as the profits of trade in fish and peltries were disappointing, the colony in Virginia was not prosperous; and the prosperity of those in New England was due not to the people who were seeking merely the profits of trade, but

to the people who were seeking a new home as a refuge from religious oppression. The consequence was that the chief interest in the New World centred not in trade, but in ownership of land.

While the English had been accustomed to the corporation as an instrument for carrying on trade, the same people, as well as those on the Continent, had for a long time been familiar with the tenure of land by large proprietors and their subtenants. Moreover, in a few instances, where border defence had been especially necessary to one who had performed some marked service for his sovereign not only had the ownership of the land of an entire border county been awarded, but also an unusually large degree of independence in the government of that county. Therefore, when Queen Elizabeth and her ministers saw the possibility of extending her claims across the Atlantic, and of gaining a foothold there against the Spaniard, it was only natural that in the patent, first to Gilbert, and then to Raleigh, provision, though only in germ, should be made for the development of a similar institution.

The overwhelming defeat of the Armada, and the absorbing attention which immediately after was devoted to trade, caused the idea of reproducing that border institution to lie dormant for a time. But when trade had yielded disappointment, when massacres by a new enemy, the Indian, had created new fear, and when it must have been felt that wealth was to be had from the New World mainly through extracting it from the soil by cultivation and improvement, that institution was revived under Elizabeth's successor, James I, with much more completeness of outline than appears in the patents of Gilbert and Raleigh, and successfully transplanted in the New World in the form of the proprietary province.

However, before such a province had been successfully

founded, a third form of government had been brought into existence among the English colonies of the New World, namely, that of the royal province. While the corporate colony was originally founded in the interest of trade, while the proprietary province was more in accord with the English system of land tenure and had been considered advantageous as a means of defence, the royal province more naturally met the demands for greater unity and more system and strength in the government of what soon became the British Empire. Consequently, with the growth of the colonies, in the interest of such unity, system, and strength both the proprietary province and the corporate colony were all the more liable, upon a real or a pretended violation of the terms of the grant, to be made royal provinces.

But while on the one hand there was the inclination of the mother country to reduce all other forms of government in her colonies to that of the royal province, on the other hand the colonists struggled to bring the government over them more and more under their own control. This struggle took one form in the corporate colony, another in the royal province, and still another in the proprietary province. In the case of the corporate colony, the seat of government was soon removed from the mother country to the colony; this weakened the control of the crown, the colonists then became members of the corporation, and a commonwealth was thereby established. In the case of the royal province there was usually a long and vehement contest between the governor, who was appointed by the crown, and the popular branch of the legislature, during which the latter gradually encroached upon the powers of the former. In the case of the proprietary province, the form and the results of that struggle may best be seen from a study of the government of

Maryland during her entire proprietary period. This much, however, may be affirmed at the outset, namely, that the charter of no other English province provided, from one aspect at least, for such a strong and absolute form of monarchical government as did that of Maryland; and yet when the Revolution of 1776 put an end to the colonial era, the people of Maryland were more strongly attached to their old form of government than were those of any other of the thirteen colonies.

In the year 1603 a monarch ascended the throne of England who had unusually high notions concerning the divine right of kings, and who, accordingly, made enormous pretensions relating to his prerogative. He quarrelled most obstinately with his first three Parliaments, and for more than ten years of his reign ruled with little aid from that body. The practice of selling monopolies and patents of nobility, which had become a grievance in former reigns, he continued in the face of increasing protests. It was this very monarch, King James I, who, in the year 1623, granted by charter the province of Avalon, in Newfoundland, to one of his principal secretaries of state, George Calvert. The soil and climate of Avalon proved to be unsuitable for the planting of a colony. James I was succeeded in the year 1625 by his son, Charles I. After Charles had, within four years of his accession, angrily dissolved his third Parliament and entered upon his eleven years of absolute rule without even one session of that body, George Calvert, who in the meantime had been created Lord Baltimore, was about to secure the royal grant of the province of Maryland by a charter which was a copy of that of Avalon. George Calvert died in April, 1632, before the charter had passed the great seal; but, bearing the date of June twentieth of the same year, it was issued to his eldest

son, Cecilius. The charter, which was the constitutional basis of the proprietary government of Maryland, was, therefore, brought into existence in an atmosphere of absolutism.

As already in part indicated, the original model on which this charter was drawn was that of the border county of Durham — known as a county palatine — which, in its turn, was, in most essentials, a reproduction by William the Norman of the mark created by Charlemagne in the frontier districts of his empire for the purpose of defence. Again, the county palatine, of which Durham, in the year 1623, was yet a strong type, was a great crown fief, the powers of whose lord were regal in kind, and inferior only in degree to those of the king.[1] The Maryland charter was therefore based upon an institution which was a kingdom within a kingdom. For so long a time as a monarch of the Stuart type sat upon the English throne, it conferred upon the grantee, the lord proprietor, both royal rights over the territory and monarchical powers of government. "It conferred on the grantee," says an able writer, "probably the most extensive political privileges ever enjoyed by an English subject since the great houses had bowed before the successive oppression of Yorkist and Tudor rule."[2]

Before 1623 the head of the palatinate of Durham, who was always a bishop, had been shorn of some of his power; but notwithstanding this, the lord proprietor of the new American palatinate was to have "as ample rights, liberties, immunities, and temporal franchises, whatsoever, as well by sea as by land, as any bishop of Durham had ever

[1] Lapsley, "County Palatine of Durham"; Osgood, "The Proprietary Province as a Form of Colonial Government."

[2] Doyle, "English Colonies in America: Virginia, Maryland, and the Carolinas," p. 281.

had, exercised, used, and enjoyed, or ever had a right to hold, use, or enjoy."[1]

His rights were both territorial and governmental. He was made the absolute lord and proprietor of the province which he was to hold in free and common socage, and pay to the crown a nominal annual rent of two Indian arrows and one-fifth part of all the gold and silver ore. His province was made both alienable and inheritable. The execution of the statute of *quia emptores* within the province having been suspended, he was to enjoy the right of subinfeudation ; that is, he was given the right to grant or lease any portion of his territory to any person who should hold the same of him — and not of the king — in fee simple or fee tail. He was given the privilege of erecting manors with courts baron and courts leet, and also of erecting ports and harbors wherein the taxes and subsidies imposed were to be reserved to him.

He was given all power necessary to ordain, make, and enact laws with the advice and assent of the freemen or their deputies, whom, in whatever manner should seem best to him, he might call together as often as need should require. Laws thus passed were to be published under his seal, and executed by him on all the inhabitants of the province by the imposition, when necessary, of fines and punishments, even to the taking of life or limb. He was authorized to appoint all officers necessary for the execution of the law, and to delegate to them such powers as he saw fit. Whenever there was not time, or whenever, owing to some emergency, it did not seem expedient to call the deputies together, he might issue ordinances for the preservation of the peace or for the better government of the people. He was authorized to establish courts, appoint judges, try all manner of cases, both civil and

[1] See Appendix.

criminal, and render and execute judgment. He was granted the full power of a captain general, with license to wage defensive war, to exercise martial law for the suppression of rebellion, to build and fortify castles and forts, and to direct all minor affairs of a military nature. He was authorized to confer titles and honors. He was empowered to erect and incorporate towns into boroughs, and boroughs into cities. He was to have the right of patronage and the advowsons of churches, and the license to erect, found, dedicate, and consecrate churches and chapels.

The lord proprietor of Maryland was, therefore, made the grantee of the territory with almost unrestricted privileges as to the use he might make of it; he was made the fountain of all office, title, and honor; he was placed at the head of the church; he was made the centre and immediate source of all military, executive, and judicial authority; and there was some ground for his claiming the right to be the originator and controller of all legislative activity.

Although the English crown reserved to itself the right of control in war, trade, and commerce, yet that crown was forever to refrain from taxing, by itself or through its courts or other agents, the person of any inhabitant of Maryland or any property therein.

But even as King James I was told by his Parliament that there could be no king without a people, so the charter which gave such extensive powers to the lord proprietor of Maryland could have availed that proprietor little had there not been a provision so guaranteeing rights and liberties as to induce people to become inhabitants of the new province. Accordingly, side by side with the grants to the lord proprietor, the charter provided that there should be no ordinance which could take away the right or interest of any person or persons, of, or in member,

life, freehold, goods, or chattels; that all laws and ordinances should be reasonable and, so far as convenient, like the laws and customs of England; and — what was especially comprehensive and proved to be far-reaching in its consequences — that the people of Maryland should be entitled to "all the privileges, franchises, and liberties" which other English subjects enjoyed.

Finally, therefore, granted during the reign of a king who, under the guidance of his theory of divine right, was ruling independently of Parliament, and its framer looking back, for a model, to an English institution established by so absolute a monarch as William the Norman when feudalism was yet in its prime, and when the modern legislative Assembly was yet only in germ, the charter of Maryland with its long enumeration of sovereign rights bestowed on the lord proprietor seemed, indeed, to make him quite as absolute within his dominion as was the English king within his realm of Britain; on the other hand, those three briefly expressed provisions, by which the rights and liberties of the people were to be secured — when turned to look both backward to Magna Carta and forward to the English Bill of Rights and beyond, — were destined clearly to contradict many of the other most important provisions of the charter, and, as they were enforced, the power, the control of the people waxed, while that of the lord proprietor diminished until the former became supreme even while the government continued on the charter basis. And so the excellence of the charter lay in the fact that, although primarily designed to foster a strong centralized government, it proved to be in a high degree elastic. Thereby it made possible the much needed control of the well-trained and able administrator during the early, the dangerous, and the critical years of the colony, while in later years it proved to contain

ample provision to admit of a sufficiently rapid rise of democratic, or rather aristocratic, tendencies.

In the development of the form of government provided by the charter, the forces making for popular self-government were stronger and less impeded in Maryland than were similar forces in the mother country. When confronted by the conditions in the New World, former customs were more quickly outgrown and set aside. Distance weakened the spirit of awe or reverence for the crowned, anointed, and consecrated monarch. The sparseness of the population, which kept low the value of land, the absence of continuous and necessary demands for the forces of war, and, especially, the abandonment of primogeniture as a rule governing the descent of land, were unfavorable to the growth of a new nobility. Then, too, among the most wealthy and influential of the people of the province were many with whom a leading motive for leaving the Old World was that they might enjoy greater political and religious liberty. A yet larger number among all ranks were attracted thither by the easy and favorable terms on which land was offered. Of these a numerous faction was composed of those restless, turbulent, thriftless adventurers who are ever thronging the frontiers. Unable to gain an honest livelihood in the Old World, they were perhaps even less able to do so in the New. They were wanting in moderation, incapable of governing themselves, and not disposed to content themselves under the government of another. Although they were usually held in subjection in Maryland, yet there were occasions on which concessions were made to them in order to prevent an uprising.

During the seventeenth century the great sparseness of the population, the absence of towns, and hence the very limited social intercourse retarded the growth of political

life. Had the province been left to itself, the low social pressure, and the consequent want of a political awakening would, during that century, have prevented more than a weak opposition to the claims of the lord proprietor; but, even from the very beginning, what was wanting in the social and political conditions was, in effect, in no small measure furnished by disturbances originating in external sources or conditions.

The earliest of such disturbances was a continuance of trouble that arose even before the charter was granted. It was early in October, 1629, that the first Lord Baltimore arrived in Virginia to make choice of land with a view of obtaining another grant from the crown. Upon this very first occasion, regardless of the facts that he had but a few years before resigned with honor so high an office as that of secretary of state, and that he had been a member of the provisional council for the government of Virginia, he was received with coldness and the spirit of contempt by the governor and council of the province. Such treatment was provoked both by Lord Baltimore's Catholic faith and by the unwillingness of the Virginians to have a new province carved out of the territory which under the charter of 1609 had been a part of the domain of the London Company. As if, therefore, with the hope of driving away this unwelcome intruder, the governor and council, with no authority for so doing, tendered to him the oath of supremacy and allegiance.[1] But Lord Baltimore was not one of those men that could be so easily turned from his purpose. After the object of his visit had been accomplished, he returned to England; and although, owing to continued opposition from the Virginians, he did not obtain a grant of the land lying south of the James River, — his first choice, — after

[1] Maryland Archives, Proceedings of the Council, 1636 to 1667, pp. 16, 17.

a lapse of over two years there was granted to his son, Cecilius, by the charter of Maryland, the land lying north of the Potomac, — his second choice.

Yet within a few months after Cecilius Calvert, the second Lord Baltimore, had obtained the charter, the crown was presented with a petition against it from the governor, council, and planters of Virginia. The petitioners complained that by the new grant they were cut off from some of their places of trade. They contended that contrary to the supposition on which the grant had been made, part of the land had been inhabited by Virginians. They pretended that the grant of the charter of Maryland was a violation of the charter granted to the London Company in the year 1609, on the ground that the territory of the newly erected province was within the limits of what had been granted by that company's charter. But that charter had been resumed by the crown in the year 1624, ever since which Virginia had been a royal province; and in support of their claim that a part of Maryland had been inhabited by Virginians nothing has been found except that Henry Fleet had been trading with the Indians, and William Claiborne was about this time establishing a trading post on Kent Island. Therefore, as there was so little ground for the petition, after it had received a formal hearing by the privy council, it was not only decided that the charter of Maryland should stand, but the governor and council of Virginia were given a royal order to treat Lord Baltimore with the courtesy and respect that were due to a person of his rank, and also to give the colonists of Maryland such lawful assistance as might conduce to the safety and advantage of both Maryland and Virginia.[1]

[1] Proceedings of the Council, 1636 to 1667, pp. 18–22; Sainsbury, Calendar of State Papers, 1574 to 1660.

But notwithstanding this order, serious trouble from Virginia still awaited Lord Baltimore and his officers. Among those Virginians who followed the first Lord Baltimore to England in order to prevent, if possible, his obtaining the charter for which he was seeking was William Claiborne, a member of the council and secretary of state for Virginia. This man was one of those who had tendered the oaths to Lord Baltimore. He was a younger son of an ancient English family, and in the year 1621, after having been commissioned surveyor for the Virginia colony, had sailed thither to make his fortune. Since his arrival he had prospered and proved himself to be a man of marked ability. In the year 1627 and, again, in 1628 he had been granted the governor's license to make an expedition into the Chesapeake Bay and other parts of Virginia for the purpose of exploration and trade with the Indians. In the year 1629 he had been made a captain and put in command of an expedition that was sent against the Indians for the purpose of punishing them for hostilities recently committed.[1]

One year later he was in England opposing Lord Baltimore; and while there he first induced a firm of London merchants, Cloberry and Company, to engage him as their agent, or special partner, to carry on a trade for furs with the Indians to the north of Virginia. Then in May, 1631, he obtained from King Charles a license for himself and his colony to trade with Nova Scotia and New England; and less than a year later he was given permission to trade with the Dutch plantations at Manhattan, by a license which was granted him by the Governor of Virginia.

After such extensive plans had been formed and the

[1] Proceedings of the Council, 1636 to 1667, pp. 24–39; Browne, "Maryland, the History of a Palatinate," Ch. III.

required license had been obtained, the next step was to establish a trading-post at some convenient place. Accordingly, an island in the Chesapeake Bay, near the mouth of the Severn, was chosen for this purpose and named Kent. Friendly negotiations for the possession of the island having been made with the Indians, the necessary buildings were erected and a number of men stationed therein.[1]

But on this occasion, from the very beginning, Claiborne's business did not prosper. First, disagreements arose between him and his company — the merchants complaining of the small quantities of peltry which they received, and Claiborne complaining both as to the quantity and the quality of the wares which the merchants sent out for the trade. At one time the London supplies were stopped for more than a year, and as Claiborne did not himself reside on the island, the men at the post were nearly starved and for a few years in constant dread of being cut off by the Indians.

Such was their condition when, in the year 1633–34, the first Maryland colonists, under command of Governor Calvert, the lord proprietor's brother, arrived within the province. Shortly before their arrival, Claiborne had been told that Kent Island was within the province of Maryland, and that the men at his trading-post must therefore relinquish all dependence on the government of Virginia. But as Claiborne had been the active opponent of the lord proprietor, as he was still a member of the council of Virginia, as the freemen at his post had been allowed one member in the Virginia house of burgesses, and as the reply to the petition of the Virginians against the Maryland charter had not yet been received, he was by no means ready to comply with the demand.

[1] It is probable that Claiborne had thus taken possession of the island ten months before the Maryland charter had passed the great seal.

About the time the *Ark* and the *Dove*, the vessels bearing Governor Calvert and his party, entered the Chesapeake, he laid the matter before the governor and council of Virginia for direction; and in the reply, given March 14, 1633–34, he was told that there was no more reason for giving up that island than there was for giving up any other part of Virginia.[1]

For a time the peace was not disturbed. For a month or two after the landing of the Maryland colonists the relations between them and the Indians were most friendly. But, although the answer to the petition of the Virginians had by that time been received, there then appeared a change on the part of the Indians; and while seeking the cause of this, Claiborne was accused by the Indian interpreter of having told the natives that the men of the new colony were Spaniards and enemies of the English.[2] Later, on the testimony of the Indians, there seemed to be some ground for believing this accusation to have been false. But such ground did not appear until after an account of that accusation had been given to the lord proprietor. As a consequence, the lord proprietor issued an instruction which directed that if Claiborne still refused to submit and the Maryland force was thought to be strong enough, he and his settlement on Kent Island should be taken and he be kept a prisoner until further orders concerning him.[3]

This instruction bears the date of September 4, 1634. Very soon after it had been received by Governor Calvert, it must have been acted upon. For only a few months later a Maryland force captured a pinnace belonging to Claiborne and his company because it was trading in

[1] Proceedings of the Council, 1667 to 1687–88, p. 164.
[2] *Ibid.*, pp. 165, 166, 167.
[3] *Ibid.*, p. 168.

Maryland waters without a license from the Maryland government. Although the capture was a just and lawful one, and gave Claiborne no ground for action, he, in order to make reprisal, armed a shallop and manned it with about thirty men under the command of Lieutenant Ratcliffe Warren, whom he commissioned to seize any vessels belonging to the Maryland government. That government, upon hearing of this, armed and equipped two pinnaces and sent them out under command of Captain Thomas Cornwallis. The two hostile forces met April 23, 1635, in the most southern waters of Maryland. The Claiborne force fired first, killing one man and wounding several. In returning the fire, the Maryland force killed the enemy's commander and two others, and thereby caused their surrender.[1] Another, but a lesser, engagement took place in the following month, after which the government of Virginia took action in the matter. The council of that government was very much aroused and embittered against the government of Maryland; but, owing to the above-mentioned commands from King Charles, it could do scarcely less than to send commissioners to Maryland for the purpose of restoring peace. This was done, a temporary peace was made, and there the matter rested for about a year and a half.

But in December, 1636, there arrived on the island a man who was to play a leading part in bringing about the subjection of the troublesome islanders to the government of Maryland.[2] This man was George Evelin, whom Cloberry and Company had sent out as their attorney, authorized to take charge of the settlement, and directed to request Claiborne to come to England for the purpose of explaining his proceedings and adjusting accounts.

[1] Proceedings of the Council, 1667 to 1687–88, pp. 169, 170.

[2] Streeter, "The First Commander of Kent Island."

At first Evelin denied the right of Maryland to have jurisdiction over the island, denied that Lord Baltimore had the exclusive right of trade within the borders of his province, and cast reflections on Governor Calvert, saying that while in school he had been but a dunce and a blockhead. In this way he soon won the confidence of the islanders and induced Claiborne to deliver to him the control of the settlement. But before departing for England, Claiborne must have become suspicious of Evelin's intentions. For, having called a meeting of the freemen and servants, he tried in their presence to obtain from Evelin a £3000 bond not to hand over the island to the Marylanders.

This Evelin refused to give; and after Claiborne's departure and his own adjustment of a few matters, he began to study the Maryland charter, with the result that he decided that Kent Island could not stand against the government of Maryland. He obtained from Governor Calvert a commission appointing him commander of the island, and then tried to persuade those under him to give their willing submission to the government of Maryland. But finding himself unable to accomplish his end by such means, he prevailed upon Governor Calvert to proceed — without waiting for further orders from England — to the reduction of the island by force. Accordingly, in December, 1637, about forty armed men landed on the island, and, the surprise being complete, the reduction was easy. However, Evelin in no way had the interest of the people at heart, being far more interested in obtaining a large manor as the reward for his services; and his treatment of the friends of Claiborne was so severe that they would not endure it, but rose in rebellion and rescued those arrested for debt. This made necessary a second reduction of the island, which was ac-

complished by a force under Governor Calvert. A little later the immediate government of the island was intrusted to other hands than those of George Evelin. Finally, as for Claiborne, while he was still absent in England the general assembly passed a bill of attainder against him, in which his possessions in the province were declared forfeited to the proprietor.[1]

For a few years after the passing of that bill Claiborne gave the government of Maryland no serious trouble. Nevertheless, so strong and persistent was his spirit of revenge that he seems to have been determined to the end of his days to lose no favorable opportunity for bringing about the overthrow of that government ; and in that very session of assembly in which he was attainted matters began to shape themselves for the first of such opportunities. For, with that session, Thomas Cornwallis, who had been the leader of the forces sent against Claiborne's men, began to manifest his disaffection toward the lord proprietor and the governor. Cornwallis was a leading member of the council of state ; he was the most stalwart military commander in the province ; and at one time he was the owner of nearly twenty thousand acres of land. As several questions of prime importance came before the Assembly, he took a stand in favor of permitting the freemen to exercise larger legislative power than the lord proprietor or the governor was ready to allow. Shortly after the prorogation he wrote a letter to the lord proprietor in which he complained that the transactions of the Assembly had been prejudicial to the honor and freedom of the colonists, that sufficient immunities and privileges had not been guaranteed to the church, and that the lord proprietor's agreement with respect to freedom of trade

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, pp. 23, 24.

had not been kept. Finally he threatened to leave the province if he were not permitted to enjoy what had been promised before his departure from England.[1]

A little later came on the war in the mother country between the king and the Parliament. It could hardly have been otherwise than that such a war should alarm the lord proprietor and incite such Maryland colonists as Cornwallis, his followers, and others sympathizing with the Parliament to more vigorous and even violent action against the government. By the year 1643 the situation had become so critical that Governor Calvert sailed for England in order to confer with the lord proprietor.

Cornwallis did not retain his seat in the council during the governor's absence; yet Giles Brent, the governor's substitute, appointed him captain general, and in that capacity he concluded a peace with the Nanticoke Indians and led an expedition against the troublesome Susquehannas. But toward the close of the year in which he performed these services there arrived from London a trader — Richard Ingle by name — of the piratical type. While this base representative of a worthy cause was loading his ship in the port at St. Mary's, he was arrested on the charge of having spoken there treasonable words against the king. Cornwallis seems to have thought this a fit opportunity for striking another blow in behalf of liberty and of showing his affection for the cause of Parliament. Very soon after Ingle's arrest, therefore, he, with one of the council and one or two others, defied the authorities, first by causing the sheriff to release Ingle, and then by helping him to get safe out of the port. For this offence Cornwallis was brought to trial and fined one thousand pounds of tobacco.[2] Moreover, the

[1] Calvert Papers, No. 1, p. 172, *et seq.*

[2] Proceedings of the Council, 1636 to 1667, p. 167.

feeling against him was so strong that he thought best to leave the province and very soon went as one of Ingle's passengers to England, where, in trouble, he passed the remainder of his days.

His departure greatly diminished the military strength of the colony. The Susquehannas remained hostile. The government was weak, Governor Calvert being still absent, and the people were divided into factions.

With affairs in this condition Claiborne felt that there was an opportunity for him. He therefore made secret visits to Kent Island and spared no means, however unscrupulous, to incite a rebellion. For a time he found but few followers. Governor Calvert returned to Maryland in September, sent a small reconnoitring expedition to Kent Island, caused action to be taken for securing protection from the Indians, and sought in every way to restore strength to the government.[1]

But before he had made much headway Ingle also returned from England with a body of armed men with whose aid he easily got possession of the seat of government. That seizure enabled Claiborne to get control of Kent Island. For nearly two years the insurrection continued. The lord proprietor was doubtful as to the recovery of his province. But — although a remnant of the council elected Hill, a Virginian, governor — Ingle did not attempt to provide the province with any government. He cared for little except pillage; and in that he and his party indulged without restraint. It was only natural, therefore, that the colonists should sooner or later feel that they had had enough of him. And when Governor Calvert, who had gone to Virginia for assistance, returned with some hired soldiers from that province

[1] Proceedings of the Council, 1636 to 1667, p. 161.

and others from Maryland, he easily regained possession first of St. Mary's and later of Kent Island.

Yet both Claiborne and Ingle escaped, and the former had not long to wait before still another opportunity was afforded him for the revenge which he so strongly craved. At the outbreak of the civil war in England the lord proprietor was a friend of the king; but after he learned of the obstinacy of the king and saw the course affairs were likely to take, he became more and more careful not to offend the Parliament. Although Governor Calvert, just before his death in June, 1647, had appointed Thomas Greene, a Catholic, as his successor, the lord proprietor removed Greene and intrusted the controlling power in the government of his province to such Protestants as were victorious in the mother country. It is true that while the new governor, William Stone, was absent in Virginia, Thomas Greene, whom he had appointed as his substitute, proclaimed Charles II as the rightful heir to his father's dominions;[1] but Stone returned soon after, and it was thought no harm would come from Greene's act. The first occasion of the trouble in which Maryland was so soon to be involved arose, not out of that act, but from the attitude which the Virginia Assembly had assumed.

By the year 1642 a Puritan settlement in Virginia had become large enough for Massachusetts to send thither three ministers as missionaries.[2] About the time of their arrival, the Virginia Assembly passed an act requiring all ministers to conform to the Church of England and directing the governor and council to compel all non-conformists, upon notice, to leave the province "with all

[1] Proceedings of the Council, 1636 to 1667, pp. 243, 244.

[2] Winthrop, "History of New England," Vol. II, pp. 78, 95 old ed., or 93, 115 new ed.

convenience."[1] Five years later two of the leaders were ordered to go, and others followed.[2] Surely, in this government King Charles I, and not his Puritan Parliament, had a friend; and after the execution of that king, the Virginia Assembly denounced the act, proclaimed his son rightful king, and made it treason to think or utter anything against the House of Stuart or in favor of a Puritan Parliament.[3]

As a consequence of such defiance the Parliament caused a commission to be issued for reducing Virginia to submission. Charges against Maryland were made at the same time, principally, however, by Richard Ingle of no "blessed memory"; and the lord proprietor so easily refuted his charges that the name of his province was not inserted in the commission. But what Ingle did not succeed in by open attack was accomplished by the underhand measures of another; and there is little room for doubt that William Claiborne was solely or at least chiefly responsible for that measure. At any rate he succeeded in getting himself appointed one of the four commissioners; and in one place the wording of the commission was changed so that in the place of the word "Virginia," it read, "all the plantations within the Bay of Chesapeake." The only other one of the commissioners who had much interest in either of the provinces was Richard Bennett, one of those Puritan leaders who, having gone out from Virginia, had found an asylum in Maryland. But although he had this reason to be grateful to the lord proprietor, he was, nevertheless, hostile to him on account of his Catholic faith.

It was near the close of the year 1651 when the com-

[1] Hening, Statutes at Large, Vol. I. p. 277.
[2] Winthrop, Vol. II, p. 334 old ed., or 407 new ed.
[3] Hening, Vol. I, pp. 360, 361.

missioners entered upon their duties in Virginia. After having reduced that province to submission, they appointed Bennett governor and Claiborne secretary of state, and then proceeded to Maryland, where they arrived the last of March, 1652. Their first step there was to remove Governor Stone. And they reinstated him only after they had completely wiped out the lord proprietor's authority by naming the members of the council, by providing that the inhabitants should engage themselves to be true and faithful to the commonwealth of England, and by requiring that all legal processes should run in the name of the Keepers of the Liberties of England.[1]

Upon learning what the commissioners had done, the lord proprietor at once began to seek a legal remedy. But before he had accomplished anything along that line, all his efforts were needed to give the authorities in England the most weighty reasons for not uniting Virginia and Maryland under one government.[2] The year after he had presented those reasons, which well answered their purpose, Cromwell dissolved Parliament and caused himself to be declared protector with all the authority of a king. Then, just as the protector acted on the theory that he was the successor to the crown, so the lord proprietor — his charter still remaining intact — not unnaturally felt that there was no reason why he should not hold his province under the protector as he had done under the late king. Accordingly, he instructed Governor Stone to proceed on that basis.[3] Stone obeyed. The protector undoubtedly favored this course of the lord proprietor; and Bennett and Claiborne, the commissioners of the late Parliament, had no lawful authority to interfere.

But the Puritans who, after having retired from Vir-

[1] Proceedings of the Council, 1636 to 1667, p. 271.
[2] *Ibid.*, p. 280. [3] *Ibid.*, p. 300.

ginia had settled in Maryland, gave trouble to the governor. In 1650 they had refused to send delegates to the Assembly, alleging as their reason for the refusal, that they thought that under the Puritan Parliament the lord proprietor's charter was endangered.[1] Further trouble arose when they refused to obey the governor's order to march against the Indians. Nearly 150 of them had signed petitions to the commissioners complaining of the governor. So, very soon after he had begun to administer the government according to the instructions he had received from the lord proprietor, those commissioners again came over from Virginia, and, regardless of their want of authority, proceeded a second time to reduce the province to submission. After Governor Stone had rejected their offers for a peaceful settlement and threatened them with violence, a small force of Puritans under the command of Bennett marched to St. Mary's, and the submission which they demanded was then obtained from the governor without the shedding of blood. The next step of the commissioners was to hand over the government to Captain William Fuller and nine others who were to serve as commissioners, or a council of state, under the lord protector — Bennett and Claiborne directing that they should proceed as nearly as might be according to the laws of England, and that Catholics should not be permitted to vote at an election of delegates to serve in the legislative Assembly.[2]

Governor Stone's account of these proceedings of Bennett and Claiborne drew from the lord proprietor a remonstrance to the protector, the effect of which was that the latter wrote a letter to Bennett commanding

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, pp. 327, 328.

[2] Proceedings of the Council, 1636 to 1667, p. 311 *et seq.*

that he and the other Virginians should give the Marylanders no further trouble. But without waiting for this letter, the lord proprietor rebuked Stone for submitting with so little resistance, and directed him to resume the office, or else — if he were afraid to do so — suffer Captain Barber to be named as his successor. In pursuance of this direction Stone recovered possession of the records, and after this act had aroused the hostility of the Puritans he prepared for an attack upon their settlements. He soon had a force of about 130 men, and with it set out for the Severn. But when the conflict had been joined, Stone and his men found that they had to contend against Commissioner Fuller with about 175 men, who fired on their front, and also against the men of a merchant ship from London and a trading craft from New England, who fired on their rear. The result was that Stone was quickly defeated with heavy loss and that he surrendered upon promise of quarter. But as Fuller's Puritan honor did not require the keeping of that promise, a court-martial was held, and Stone and nine others were condemned to death. Four of the condemned were then shot down; and the lives of Stone and the other four were spared only after the intercession of women and soldiers.[1]

For more than a year the Puritan conquerors used their victory in such a manner as could not fail to reflect dishonor upon their names. But in the meantime the lord proprietor was not idle in England. On the contrary, he was busy urging the home government to hear and decide his case. After he had been kept waiting until the latter part of the year 1656, a decision in his favor was rendered. The following year articles of agreement between him and Richard Bennett were passed, by which the govern-

[1] Hammond, "Leah and Rachel; or the Two Fruitful Sisters, Virginia and Maryland," etc.

ment was to be fully restored to the lord proprietor.[1] Those articles were executed at the very close of the year 1657; and thereafter Claiborne ceased to be a dangerous enemy to the lord proprietor's rights.[2]

But less than two years later, one to whom the lord proprietor had by an unfortunate choice intrusted the office of governor became either the leader or else the mere instrument of a small group of men who were seeking to rob their superior of his authority. It was in July, 1656, while the case against the Puritan commissioners was yet undecided, that the lord proprietor issued a commission to Captain Josias Fendall to succeed Stone, who was at that time in prison, as governor.[3] The new governor accomplished nothing until after the execution of the articles of agreement by which the lord proprietor was restored to his rights. From that time all seems to have gone well until the death of Oliver Cromwell in the year 1658. But the weakness of his son and successor, Richard, soon produced a state of extreme uncertainty with respect to the fate of the home government; and it may be that this was the temptation which led the men of Fendall's party to get possession of what power they could, in the hope that affairs in England might take such a turn as would enable them to retain what they got. At any rate, a more satisfactory explanation for their proceedings does not appear.

It was in the session of assembly that met on February 28, 1659–60, that Governor Fendall, Thomas Gerrard, Nathaniel Utie, — the latter two were of the council, — and the majority of the house of delegates struck their

[1] Proceedings of the Council, 1636 to 1667, p. 332 *et seq.*

[2] In the year 1685, however, Claiborne, in alliance with Penn, sought the issue of a writ of *quo warranto* against the Maryland charter: see Proceedings of the Council, 1667 to 1687–88, pp. 452, 454, 455.

[3] Proceedings of the Council, 1636 to 1667, p. 323 *et seq.*

blow for the overthrow of the lord proprietor's power and attempted to make the house of delegates supreme. By this means a commonwealth, similar to that which had existed in the mother country, was to be established.

The delegates took the first step in these proceedings by informing the governor and council that they judged their house to constitute a lawful assembly without dependence on any other power in the province, and also that they judged their house to be the highest provincial court of judicature. Thereupon, two conferences were held between the governor, council and house of delegates, in the second of which Governor Fendall declared it to be his belief that by the Maryland charter King Charles I had intended to give the freemen or their deputies full power to make and enact laws without the lord proprietor's assent. Three members of the council — among whom was Philip Calvert, secretary of the province and brother of the lord proprietor — protested. Yet, in the face of that protest, the delegates, continuing as they had begun, informed the governor and council that they could no longer sit as an upper house of the Assembly, but that they might have seats in the Assembly, sitting as one house. It was further agreed that although the governor should sit as president of that house, the office of speaker should be continued, and the delegates should reserve to themselves the right of adjourning or dissolving the Assembly. Finally, as Governor Fendall surrendered his commission from the lord proprietor and accepted a new one from the Assembly, it was not to be feared that he would venture to overpower the delegates in that body, through his right to summon to it by special writ any number of freemen.[1]

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, pp. 388–391.

But although these treacherous men so completely stripped the lord proprietor of his authority, they seem to have had little military force or little popular support with which to defend themselves and what they had done. By the time the news had reached England, Charles II had become king. The lord proprietor, upon receiving the information, removed Fendall, made his brother Philip governor, and obtained letters from the king commanding all to acknowledge and support his government, and directing Berkeley, the governor of Virginia, to give any help that might be needed.[1] The new governor met with no resistance, Berkeley's assistance was not needed, and once more the lord proprietor's authority was fully restored.

For the next twenty years the home government was too stable to be the occasion of any disturbance in the colonies. Moreover, in the year 1661, Charles Calvert, the lord proprietor's eldest son, succeeded Philip Calvert as governor; and after serving in that capacity for fourteen years he succeeded his deceased father as lord proprietor. With the exception of a few short intervals he resided in the province from the time he became governor until the year 1684. From the outset he had to contend with the remnant of that opposition which had so long been kept active by external agitations; and he is to be given credit for keeping that remnant, during his residence in the province, so well under control that even when Bacon's rebellion, of the year 1676, broke out in Virginia he quickly crushed a similar movement in his province. But his too arbitrary or too illiberal measures were better adapted to the mere suppression of an opposition than to the dissolving of it in a spirit of general good feeling.

Also, as a consequence of the grant of the province of

[1] Proceedings of the Council, 1636 to 1667, pp. 392–399.

Pennsylvania to William Penn in the year 1681 the lord proprietor of Maryland was confronted with one of those occasions in which his presence was much needed at one and the same time both in the province and before the home government. Whatever may be the prevailing opinion as to the character of William Penn, it is clear that in dealing with the Catholic lord proprietor of Maryland his Quaker principles did not cause the spirit of brotherly love to control his actions. On the contrary, after his strong desire to acquire for his province the command of a suitable water communication with the ocean had made him extremely covetous of the northeastern part of Maryland, he did not scruple to league himself with the unprincipled Duke of York, not only for the purpose of robbing Lord Baltimore of that part of his province, but even — when the duke became King James II — for making void the Maryland charter.

Nowhere in that charter, except in the preamble, was there anything whatsoever said about the land to be contained in the grant being *hactenus inculta* — hitherto uncultivated — and inhabited only by savages. And even if there had been a provision to that effect it would lawfully have impaired that grant but little ; for at the time it passed the great seal none but Indians, the Claiborne men, and Fleet were making their abode within it.

It was not until the year 1638 that the Swedes made their first permanent settlement within what was then the limits of Maryland.[1] From that time, however, they continued to make settlements on the west side of the Delaware River without receiving any attention from the Maryland authorities or being otherwise seriously disturbed until the year 1655, when they were subdued by the Dutch. Four years later the Maryland government endeavored to effect

[1] Archer, "The Dismemberment of Maryland."

a settlement with the Dutch.[1] But this had not been accomplished when King Charles II granted to his brother James, Duke of York, all the territory extending from the west bank of the Connecticut to the eastern shore of the Delaware. Upon receiving this grant the duke despatched a military force with an order to reduce all the inhabitants of this territory to his subjection. And in the execution of that order the settlements west of the Delaware were also reduced with the result that the land there was claimed by the duke, even though a part of it was within the limits of Maryland.

Such was the status when Penn petitioned for his charter. While his petition was under consideration, Lord Baltimore's agents requested that the southern boundary of the proposed province should not extend south of Susquehanna fort, which was on the fortieth degree of north latitude, and, therefore, on the northern boundary of Maryland. Furthermore, the agents asked that a clause be inserted saving Lord Baltimore's rights. Although Penn found no fault with these requests, yet when his charter had passed the seals it was found that the only provision with respect to the line between Pennsylvania and Maryland was that the former should be bounded on the south "by a circle drawn at twelve miles distance from New Castle, northward and westward to the beginning of the fortieth degree of north latitude, and thence by a straight line westward."[2]

As New Castle was afterward found to be twenty miles south of the fortieth degree, it became clear that Charles II had granted to Penn a considerable strip of territory which his father had previously granted to Lord Baltimore. What seems to have been a mistake of eight miles

[1] Proceedings of the Council, 1636 to 1667, p. 369 *et seq.*

[2] Proceedings of the Council, 1667 to 1687–88, pp. 272, 273.

as to the distance of New Castle from the fortieth degree may have been wholly due to inaccurate geographical knowledge; but the boundary provision with regard to the circle looks much like a device of Penn to get territory which he knew belonged to Lord Baltimore.

Very soon after he was in possession of his charter from the king, Penn obtained from the Duke of York a deed of enfeoffment for the land on the west side of the Delaware as far south as Cape Henlopen. Then, after first visiting the northern border of Maryland and getting more light on the situation of places there, he had a conference with Lord Baltimore. But at that conference he would not listen to Baltimore's proposal to settle the boundary question by taking an observation on the spot for locating the fortieth degree, and then accepting that parallel of latitude as the line between the two provinces. Instead of this he proposed that the northern boundary of Maryland should be determined by measuring two degrees of latitude due north from Watkins's Point, which was the southern limit of the eastern shore of Maryland; this being rejected, he proposed that the fortieth degree should be ascertained by accepting the old observation at Cape Henlopen and then by measuring northward; finally, he went to such an extraordinary length as to propose that Lord Baltimore should move both his southern and his northern boundary thirty miles to the south in order that Pennsylvania might have an outlet on the Chesapeake.[1] The result was that a second conference closed with no prospect of an agreement. It began to look as if it would be necessary to lay the dispute before the home government. And although Lord Baltimore's presence was at this time needed in England because of his having incurred the displeasure of the

[1] Proceedings of the Council, 1667 to 1687–88, pp. 374–394.

crown with respect to trade, and because he had been charged with neglect of Protestantism, yet it seems probable that the leading purpose for which he sailed to England in the year 1684 was to defend his rights in the case against Penn and the Duke of York.

Moreover, it was in this particular that the more immediate course of events turned most strongly against him. The Duke of York, as if to make Penn more secure in the possession of the land which he — without himself having title to it — had enfeoffed to Penn, obtained from his brother, the king, a grant of all the territory "between New Jersey and Maryland" as far south as Cape Henlopen. Then, soon after Lord Baltimore's arrival in England, the Duke became King James II. Thereafter no room was left for doubt as to which way the case would be decided. Upon ascending the throne James referred it to the commissioners of trade and plantation. It being too early in his reign for those commissioners to think of offending his Majesty, they, regardless of both justice and facts, decided that by Lord Baltimore's charter only "land uncultivated and inhabited by savages" was included in his province, and that the land in question had been inhabited by Christians before, at the time of, and ever since the charter of Maryland was granted. On the basis of their decision they recommended that the east half of the land lying between the bays of Delaware and Chesapeake, and extending from the latitude of Cape Henlopen north to the fortieth degree, should be adjudged to belong to the crown.[1] The judgment was rendered as the commissioners recommended, and thereby the king was enabled to make Penn more secure in this part of his possessions.

This was not all. The greater part of the boundary

[1] Proceedings of the Council, 1667 to 1687–88, p. 455 *et seq.*

between Maryland and Pennsylvania was yet undetermined. Lord Baltimore's charter still stood in the way of Penn's desire to secure possession of the head of the Chesapeake Bay. It is clear that the affable and wily Quaker was a favorite of the king, and that the latter felt himself to be loosely bound by the acts of his royal ancestors. Add to these particulars the growing desire of the home government, in the interest of trade, for the more immediate control of the government in the colonies, and about the whole explanation is given for the issue of the writ of *quo warranto* in April, 1687, against the Maryland charter.[1]

As the king sought safety in flight before judgment on that writ was obtained, the charter was saved from destruction. Penn was therefore forced either to desist or to resort to other action against Lord Baltimore. He chose the latter, and it was not until the year 1767 that the disputed boundary was fully determined. However, after the failure of the writ of *quo warranto* that dispute was very largely of the nature of a private suit between the two proprietors, and had scarcely any bearing upon the government of Maryland further than to cause occasional disturbances on the border.

It was the effects of the dispute for the few years preceding the English Revolution of 1688 that were the most far-reaching, because the lord proprietor was thereby kept away from his province at a most critical period in its history. As already stated, Charles Calvert had only suppressed the opposition. In fact, he had suppressed it in such a way as to cause it to grow in strength. For, instead of being a leader of men by means of gentleness, sympathy, and persuasive appeal, he was cold, stern, and self-centred, and was not over-scrupulous as to his choice

[1] Proceedings of the Council, 1667 to 1687–88, p. 452 *et seq.*

of measures for immediate triumph over the opposition. He filled the most important offices with the members of his own family. He restricted the suffrage. He endeavored to keep the leaders of the opposition out of the house of delegates by trying to avoid summoning to that house one-half of those who had been elected. When that house was obstinate about passing some of his favorite bills, he called its members before him in the upper house, and there usually succeeded in forcing from them their reluctant assent. He vetoed acts of assembly several years after they had been passed. Only a few years subsequent to a fall of more than fifty per cent in the price of Maryland tobacco, the rent on all land to be granted after the year 1670 was doubled. Finally, while a very large per cent of the people were Protestants, the government was kept by the proprietor under the control of Catholics.

In the light of these facts, his own success in managing the opposition, up to the time of his departure for England in the year 1684, must be attributed in no small measure to weakness in the political life of the yet sparsely settled province. But as more than half a century was to elapse before political activity became strong and vigorous, all might have continued well for the lord proprietor, if he could have remained in the province or if he had intrusted his government during his absence to some faithful and able administrator. Neither of these alternatives, however, was to be. Before departing he made his son, Benedict Leonard, a minor, nominal governor, and divided the real authority of the office among the members of a board of deputy governors, at the head of which he placed his cousin, George Talbot, a man of Irish birth.[1]

[1] Proceedings of the Council, 1681 to 1685–86, pp. 246–250.

He had not been long absent before Talbot boarded a vessel on which Christopher Rousby, one of his Majesty's collectors of customs, was carousing with the captain. A violent quarrel thereupon arose in which Talbot stabbed Rousby to the heart. The captain, refusing to surrender Talbot to the Maryland government for trial, carried him to Virginia. But after the governor and council of Virginia had likewise refused to deliver him to the Maryland government, his wife, aided by two Irishmen, succeeded by some device in securing his release from prison, and carried him back to his home. He was afterward taken and put in prison at St. Mary's to await orders from the king concerning his trial. The king directed that the Maryland government should deliver him to the governor and council of Virginia, and that that body should deliver him back to the captain, who should bring him to England for trial. He was, however, tried at James City and found guilty of feloniously killing Rousby. Although he was pardoned by the king, yet, as the lord proprietor had already been heavily fined for giving Rousby trouble while in the discharge of the duties of his office, this whole affair was an unfortunate one.[1]

Nothing further of serious consequence happened until after a son was born to the Catholic King James II. On that occasion the lord proprietor was ordered by the king's privy council to have the birth proclaimed in his province, and to have days appointed there for a solemn thanksgiving for the "inestimable blessing."[2] The due execution of that order, and the consequent rejoicing of the Catholics over the birth of a prince to a Catholic king whose reign had been almost unendurable, was received by the Protestants of Maryland in much the same

[1] Proceedings of the Council, 1681 to 1685–86, pp. 298–305, 475–483.
[2] *Ibid.*, 1687–88 to 1693, pp. 40, 41, 44.

spirit as similar demonstrations were received by the Protestants of the mother country.

In the meantime the lord proprietor had again shown his inability as a judge of the fitness of men to govern by sending over William Joseph, a quaint fanatic, to succeed George Talbot as president of the board of deputy governors. His opening address to the Assembly was an exposition of his idea about the divine right of kings. Near the opening of it he said: "Nor ought we to be strangers to the end and duty for which the Divine Providence hath ordered us thus to meet. I say Providence hath ordered, for there is no power but of God; and the power by which we are assembled here is undoubtedly derived from God to the King, and from the King to His Excellency the Lord Proprietary, and from his said Lordship to Us." The remainder of what he said was devoted to an attempt to teach the members of the Assembly their duty: first, to God; second, to the king; third, to the lord proprietor; and, fourth, to themselves. The whole address was of the nature of a long and ridiculous sermon, the spirit of which seemed calculated to stifle any thought of either religious or political liberty.[1]

Before the close of the day on which it was delivered a storm arose in the Assembly; the immediate occasion of which was that, although the members of the lower house of this Assembly had at a former session taken the oath of fidelity to the lord proprietor, they were requested to do so again. Because of their refusing they were, two days later, called into the upper house, where Joseph told them that their action implied rebellion, and that by the laws of the province they were bound to take the oath under pain of banishment, fine, or imprisonment. But Joseph

[1] Proceedings and Acts of the General Assembly, 1684 to 1692, pp. 147–153.

was not so successful with this speech, as the lord proprietor had been with his on somewhat similar occasions. On the contrary, the lower house, on the following day, after first resolving that they were ready to take the oath according to law — but not from fear of any penalties — further resolved that they knew not how to satisfy the law and the government with respect to the oath otherwise or better than they had already done; and as Joseph, even with the help of the council, was unable to prevail upon them, as members of the Assembly to take the oath for the second time, he had to let the matter pass after proroguing the Assembly for two days, in order that the same persons might be obliged to take the oath as ordinary citizens. There was little harmony during the remainder of the session; and although the lower house was prevailed upon to pass a bill for a perpetual commemoration and thanksgiving on every tenth day of June for the birth of the prince, the government could have been by no means strengthened thereby.

The crisis was now drawing near. While the above events were taking place in the Assembly, the Revolution of 1688 was in progress in the mother country; and in the second month after the prorogation William and Mary ascended the throne of England. The lord proprietor was given an order to have the new monarchs proclaimed in his province. He immediately despatched a messenger to carry the order to his council. But the messenger died on the way and the order failed to reach its destination.[1] The consequence was that such a proclamation was made in Virginia and New England long before the Protestant king and queen received any official recognition in Maryland.

This proved to be of great moment to the government

[1] Proceedings of the Council, 1687–88 to 1693, pp. 113, 114.

of the province. For several years a few of the lord proprietor's enemies had now and then tried to spread a rumor, of their own fabrication, that the Catholics were forming a plot with the Indians to murder all the Protestants. The very limited intercourse between settlements in distant parts of the province made it easier to make the inhabitants of one settlement believe a false account of what was going on in another; and, now, the failure of the lord proprietor's Catholic government to recognize the new Protestant monarchs was just the thing needed by those who were endeavoring to effect an uprising, through the spread of their account of how an armed force of nine thousand Indians, French, and Papists were about to fall upon the Protestants or had already begun the attack.[1] It was only by the prompt and brave action of Henry Darnall, the alleged leader of the plot, in hurrying from place to place for the purpose of convincing the people of the falsity of the rumor, that the uprising at this time was quelled in its early stage.

Even then the enemy was neither vanquished nor discouraged. John Coode, its leading spirit, was a man of dash and fiery vehemence. He had long been associated with a traitor, Josias Fendall; and he had married a daughter of Thomas Gerrard, who had been a member of the council under Fendall. In the year 1681, Coode had been arrested and tried on the charge of having joined with Fendall in an attempt to stir up another revolt. It was easy for him to be first a Catholic and then a Protestant. Although he had once been a clergyman, he was a vain, shiftless, and unprincipled man, caring nothing for Protestantism, but ardent and determined in craving revenge on the lord proprietor.

After the rumor about the Catholics and Indians had

[1] Proceedings of the Council, 1687–88 to 1693, p. 84.

failed, in March, 1689, to accomplish its purpose, the opposition, among whom were several assemblymen who had publicly averred that the rumor was false and malicious, was organized into what was called a Protestant Association, with Coode as captain of the militia. William and Mary still remained unrecognized by the government. The report was spread that the government houses were being fortified. Some of the Associators went in arms to investigate. The records were first seized. Shortly after the deputy governors and other chief officers, who had been able to collect a force of only about eighty men, surrendered before a shot had been fired.[1] And thus the government changed hands without bloodshed.

The work of the Association met with rather limited approval, indifference, and even opposition from many Protestants. But this must be attributed in part to the yet unawakened political life, and also to the character of the leader. While, on the other hand, had the lord proprietor's government been more liberal, and manifested more zeal in promoting the welfare of all, it would not have been in want, at this trying time, of a numerous body of valiant defenders.

After the Association had gained control, the new monarchs were proclaimed, an election of delegates was held — in some counties this was under military supervision — an assembly was called, and all offices were filled with Protestants. In a series of falsehoods mixed with a few grains of truth, Coode represented to the king how the lord proprietor had forfeited his rights, and how the Association had acted only in the interest of his Majesty's service and the Protestant religion.[2] Later, each of the older counties, except Anne Arundel, sent an address to

[1] Proceedings of the Council, 1687–88 to 1693, p. 116.

[2] *Ibid.*, pp. 101–107.

the king in support of the movement, and beseeching him to take the government into his own hands. Counter addresses, denouncing Coode and his followers in strong terms, were also sent; but while the former addresses had, in all, nearly 450 signatures, the latter had less than one-half that number.[1] Finally, a committee appointed by the new Assembly represented to the crown that under the proprietary government none but papists held office; that Catholicism was encouraged while the Church of England was grievously neglected; that freedom of elections was violated, and only a select portion of those who had been elected delegates were summoned to serve in the Assembly; that the ordinance power granted by the charter was exceeded; that an unwarrantable power to dispense with, veto, or repeal laws was exercised by the lord proprietor; that excessive fees were enacted by officers; and that the province was governed by "cruel, sanguinary, unjust, unreasonable, illegal, tyrannical acts of Assembly craftily obtained from the unwary representatives of the province contrary to the laws of England and his Lordship's charter."[2] All these charges were couched in exaggerated language, but they were by no means without foundation.

It will be remembered that at the time of the flight of James II the *quo warranto* proceedings against the Maryland charter were in progress. The termination of the suit, by the king's flight, left the charter unimpaired, and the proceedings were never resumed. Still, the restoration of a proprietary province proved to be not in accord with King William's purpose in accepting the English crown. When he accepted that crown he was seeking greater resources with which to carry on war against his

[1] Proceedings of the Council, 1687–88 to 1693, pp. 128–147.

[2] *Ibid.*, pp. 215, 216.

old enemy, Louis XIV. He therefore had a strong desire not only that the colonists and colonial trade should be protected from the enemy, but also that his resources should not be curtailed by obstructions, in colonial ports, to the trade of England. For these reasons he was disposed to make the most of the least opportunity for changing a proprietary government to a royal one.

In April, 1689, the king in council requested the committee for trade and plantations to consider what course would be most advisable to pursue with the proprietary provinces of Maryland, Pennsylvania, and Carolina in order to provide for the better defence of the colonial possessions against the enemy. The same month that committee recommended that Parliament should take up the question of making those provinces more immediately dependent on the crown ; and one month later it particularly urged that this should be done in the case of Maryland.[1]

Before anything of this kind had been done, however, there came from Maryland the several addresses telling what the Protestant Associators had done, and it is needless to say that the king and his advisers approved of their deeds. Furthermore, only a little later, while the attorney general was considering what might be done in the case, another letter came from Coode stating that some papists, confederates of one of the late deputy governors, had murdered John Payne, another of his Majesty's collectors of customs while in the discharge of the duties of that office.[2] Then, too, there came at this time the news of how the Indians of Canada, instigated by the French, had made a raid into New York and massacred the inhabitants of Schenectady.

[1] Proceedings of the Council, 1687–88 to 1693, p. 100.

[2] Instead of being in the discharge of the duties of the office of king's collector, he was, at the time he was killed, acting as a captain under a warrant from Coode.

In the light of these accounts from America, Lord Chief Justice Holt, in June, 1690, gave the following opinion: "I think it had been better if an inquisition had been taken, and the forfeitures committed by the Lord Baltimore had been therein found before any grant be made to a new governor. Yet since there is none, and it being in a case of necessity, I think the King may by his commission constitute a governor whose authority will be legal, though he must be responsible to the Lord Baltimore for the profits. If an agreement can be made with the Lord Baltimore, it will be convenient and easy for the governor that the King shall appoint. An inquisition may at any time be taken if the forfeiture be not pardoned, of which there is some doubt." [1]

The next important move was taken on August 21, 1690, when it was ordered in council that the attorney general should forthwith proceed by *scire facias* against Lord Baltimore's charter in order to vacate the same. He, accordingly, proceeded on the ground that the seizure of the government into the king's hand was the only means of preserving the province. And after Lord Baltimore and his counsel on the one side, and Coode and Cheseldyne — the latter having been speaker of the late lower house of Assembly — on the other side, had been given a hearing before the committee for trade and plantations, the government of the province was taken entirely away from Lord Baltimore, without, however, depriving him of his territorial rights.

The royal government was well established by the middle of the year 1692, and for the next twenty-three years Maryland was administered as a royal province. During that period the officers that had hitherto been appointed and instructed by the proprietor were appointed

[1] Proceedings of the Council, 1687–88 to 1693, p. 185.

and instructed by the crown ; laws that were passed by the General Assembly were subject to the crown's dissent; and writs and legal processes ran in the name of the king. Although the old offices and the old legislative and administrative forms were, in the main, preserved, nevertheless this was a time in which a heavy and effective blow was given to the hitherto rather absolute government of the province, and a step that was long and full of consequence was taken toward popular government. The English Revolution of 1688 had transferred the sovereign power in the home government from the king to the houses of Parliament, and, consequently, extended in no small measure the "privileges, franchises, and liberties" of British subjects. The Maryland Revolution of the following year resulted, for the inhabitants of that province, in a security of their rights as British subjects that proved to be far more effective than it had formerly been. By the two revolutions, therefore, the rights of the people of Maryland were not only much extended, but they were better secured. The manner of electing and summoning delegates to serve in the legislative Assembly was no longer determined by an ordinance of the lord proprietor, or of his governor and council, but by a legislative enactment. Never again was a county — the unit of representation in the lower house of that Assembly — erected by executive ordinance, but only by act of Assembly. The lower house effectively denied that a new office could be created without its assent. The legislature, and not the governor and council alone, determined for a time the fees of officers. The administration of justice was to some extent decentralized. The Church of England was established by act of assembly. In attempting to separate the territorial from the governmental relations, the strength of feudal custom was weakened, whereby the land office ceased to

be so much a private possession of the proprietor and became more public in nature.

The proprietor having become a Protestant, the government was restored to him in the year 1715. But as the laws and the precedents made in the royal period survived, the powers of lord proprietor and people at the beginning of the Restoration were far more equally balanced than they had been before the Revolution of 1689. After the Restoration the lord proprietor had to contend with a political power that was developing within, rather than with hostility that was excited from without. Several years of industrial depression, and an attempt of the lord proprietor to deny that the statutes of the mother country extended to his province, keenly awakened the political feeling of the people, whose numbers had increased with the growth of years and caused the contradictions of the charter with respect to the proprietor's powers and the people's rights to become more fully realized.

Scarcely had the controversy with respect to English statutes ended in victory for the people's representatives when, about 1735, a marked industrial movement began. Hitherto, nearly all the people of the province had been engaged in the raising of tobacco, and their plantations lay, for the most part, along the banks of rivers or the shore of the bay, with little communication, except by water, between them. But now, as the remoter parts of the province began to be settled, wheat was raised, roads were cleared, bridges were built, towns sprang up, and the facilities for social and commercial intercourse were thereby greatly increased. At the same time the extremes of social condition rapidly diverged. So, by the middle of the eighteenth century, social pressure had risen far above that of the previous century, and the pulse of political life beat with vigor. Finally, the subversion of feudal

customs during the period of royal government caused the proprietor to meet with stronger opposition to what he claimed as his territorial rights; and this very opposition was a leading force in animating the strengthened political life and inspiring it to resist and to attack the government with such effect that the people of Maryland were at last permitted to enjoy the most of their rights as British subjects, regardless of all powers granted by the charter to the lord proprietor.

PART I

TERRITORIAL AND SOCIAL RELATIONS

CHAPTER I

LAND AND THE LAND OFFICE

Had the military features of the old system of land tenure been preserved at the time of the founding of Maryland, the administration of the land office might have been the controlling force in the entire proprietary system; but, as it was, the military element in the feudal system had disappeared, and the only variety of tenure in Maryland was free and common socage, the obligations of which were fealty and rent, and its liability, escheat. Primogeniture took no strong root in the province. The attempts of priests to secure vast tracts of land for the church were thwarted by the introduction, at the instance of the lord proprietor, of the principle of the English statute of mortmain.

Nevertheless, the system was essentially unlike anything in use in modern times. As in all mediæval fiefs, both ownership of the soil and jurisdiction in everything pertaining to the territory were originally vested in the lord proprietor. With that ownership and that jurisdiction went extensive rights and privileges; and not only did those rights and privileges begin to suffer curtailment long before the final overthrow of the proprietary system, — thereby weakening that system at a vital point, — but by his effort to preserve them the lord proprietor provoked the opposition to more vigorous attacks on his governmental rights. A study of the land system, or of Maryland as a

fief, is therefore an essential part of the study of the entire proprietary system.

Under the proprietary régime the granting of land and the regulation of its settlement were primarily functions not of township, county, or the General Assembly, but originally they were entirely those of the lord proprietor, who performed them, or directed the performance of them, through the issue of ordinances and instructions. All officers to whom the lord proprietor delegated any of his territorial jurisdiction were by him appointed and kept subject to removal at his pleasure.

Before the first colonists had left England the proprietor had given out his first conditions of plantation, and agreed therein to grant or cause to be granted two thousand acres to every adventurer who should take into the province in the year 1633, for the purpose of settlement there, five men between the ages of sixteen and sixty. For taking into the province any number of persons less than five the adventurer was to receive a grant of one hundred acres for each one between the ages of sixteen and sixty, and fifty acres for every child under the age of sixteen. The annual rent in every case was to be ten pounds of good wheat for every fifty acres. For transporting five persons into the province after the first year only one thousand acres were to be granted, and the rent was also to be higher.[1] All former conditions were revoked or amended with each new and successive issue that appeared in 1641, 1648, 1649, and 1658. The last of these were, in later years, several times modified; and from the earliest times the proprietor often gave special terms, in the form of special warrants, as an encouragement or favor to particular persons. In 1683 the acquiring of right to land by transporting persons into the

[1] Proceedings of the Council, 1636 to 1667, pp. 47, 48.

province ceased, and thereafter title could be acquired only after the payment of caution, or purchase money, the regular rate of which was at first fixed at one hundred pounds of tobacco for every fifty acres.[1]

Any person entitled to land by the conditions of plantation was in the first place required to record his right or rights in the secretary's office; as, "Came into the province January 12, 1637, Captain Robert Wintour, who transported Richard B., A. W., J. S., B. P., T. W. — G. T. a boy aged fifteen years."[2] The recording of such rights was either accompanied or followed by demands for the amount of land due; and such demands were sooner or later followed by a warrant of survey signed by either the governor or the secretary and directed to the surveyor general. After the survey had been made by the surveyor, a certificate, signed by the surveyor general, was returned to the office where its contents were inserted in a patent which was passed by the governor in the name and under the seal of the lord proprietor.[3] The patent or grant was of the nature of a deed, and gave the consideration for which the grant was made, the description of the grant as found in the certificate of survey, and, finally, the conditions of tenure.

Such in the early years were the essential steps in the process of acquiring title to land, but the business was made much less simple by many attendant proceedings, such as securing proof of rights, the sale of rights, petitions, caveats, and resurveys.[4]

Occasionally, when there was a strong desire to encourage settlement in a particular district, such as one near a disputed boundary line, authority was vested in some

[1] Proceedings of the Council, 1667 to 1687–88, p. 394 *et seq.*
[2] Kilty, "The Landholder's Assistant," p. 67.
[3] *Ibid.*, pp. 70–73. [4] *Ibid.*, pp. 89–91, 133 *et seq.*

person or commission in that locality to prove rights and to issue warrants of survey returnable to the secretary's office.[1] With such exceptions all land business proceeded directly from St. Mary's, or later from Annapolis as the seat of government.

After the granting of land had continued for several years, a considerable variety of holdings appeared.

The most common of these was the ordinary freehold which was held, nominally of some one of the proprietor's manors, subject to the payment to the proprietor of an annual rent and, after 1658, a fine, equal to one year's rent for every alienation of it.[2]

During the administration of Cecilius, the first lord proprietor, from 1632 to 1675, authority was given by him for the erection into a manor of any grant containing one thousand acres or more. Before 1676 about sixty manors, averaging a little less than three thousand acres each, had been erected for others than those of the lord proprietor's own household. However, with the accession of Charles, the second lord proprietor, in 1675, the erection of manors almost ceased.

A manor differed from a mere freehold in that it was given a name, and in that the grantee was allowed to hold court-baron and court-leet, and have all fines and profits belonging thereto. Further, the early grants of manors gave the grantee the advowsons of churches and unrestricted privileges of hunting for any game.[3] The court-baron was given jurisdiction over civil cases in which the damages did not exceed a fine of forty shillings, while the court-leet took cognizance of criminal offences committed within the precincts of the manor. To what extent

[1] Proceedings of the Council, 1636 to 1667, p. 469.

[2] Land-office Records, Liber 1, folio 54.

[3] *Ibid.*, folio 43 *et seq*

such courts were held, there remains no evidence except the records of a court-baron held on St. Gabriel's Manor in the year 1656, and the records of a few sessions of both court-baron and court-leet held on St. Clement's Manor between the years 1659–72.[1] The records of the latter manor show that it had its steward, constable, and bailiff, and that a jury of twelve men, after hearing the charges or complaints, made its presentments, often fixing the fines, and occasionally referring the matter to the governor of the province. If the fine imposed by the jury was thought to be too excessive, it might be revised by affeerors sworn for that purpose.

Only in the grants of the first three manors was any portion of the land set apart as demesne land, that is, land which was not to be granted out in tenancy nor in any way severed or aliened from the said manor. The grant of a manor, like that of a freehold, subjected the grantee to the payment to the proprietor of the annual rent, and the fine for every alienation.

In 1665 the proprietor issued instructions directing that in every county at least two manors, containing not less than six thousand acres each, be surveyed and set apart for his private use.[2] Each of these proprietary manors was placed in charge of a steward, who leased it in parcels to tenants usually for three lives, or for a long term of years, at a rent seldom exceeding ten shillings per hundred acres. Owing to failure to preserve the bounds of them, these manors much dwindled in size or, in some cases, entirely vanished; while such portions of them as were preserved suffered from shameful neglect by poorly paid and incompetent stewards. As a consequence, the bounds

[1] Bozman, II, p. 581; Mayer, "Ground Rents in Maryland," pp. 151–157.

[2] Kilty, pp. 95–98.

between tenements could not be found, leases were lost, and the rents not paid.[1]

In addition to the proprietary manors, the proprietor made several other reserves for the purpose of confining surveys and settlements to those parts of the province in which it was desired that they should be made, or because of the appearance of copper or other ore, the extraordinary fertility of the soil, or the contiguity to towns. Although portions of such reserves were leased, yet none of them were surveyed, laid out, and named as the manors were.[2]

In 1766 the proprietor appointed a commission to sell his manors and reserves;[3] and although the sale of them was somewhat slow, yet nearly fifty thousand acres were sold in seven years, and this meant that the proprietary lands corresponding to those of the lord's demesne in the mediæval fief were to disappear.[4]

Land from which grants were made according to the conditions of plantation became known as vacant land, and was left uncultivated. A considerable quantity of this remained in nearly all parts of the province down to the final overthrow of the proprietary government. But it had been the practice to locate under land warrants by selecting the most rich and fertile land without regard to the regularity of its area or making it in any way coincide with the boundary of land previously granted. Therefore, especially in the older counties, the most of what came to be left of this vacant land was not only the poor-

[1] Calvert Papers, No. 2, pp. 79, 83, 89; Sharpe's Correspondence, Vol. II, p. 62.

[2] Sharpe's Correspondence, Vol. I, p. 426 *et seq.*

[3] Council Records, February 21, 1766.

[4] Sharpe's Correspondence, Vol. III, pp. 335, 392; Table of Sales, Maryland Hist. Soc.

est in quality, but it lay in such small irregular parcels as to be of but little value.[1]

Although the lord proprietor or his officers made the rules according to which surveys were made, yet in after years it was found that the amount of land included in many of the early certificates of survey exceeded what it had been intended to grant. Such excess became known as surplus land; and it arose from the surveyor's practice of stating the distance from one boundary — such as a river, a creek, a tree, or an artificial mark — to another on erroneous measurement, or by estimate without any measurement at all.[2] Although the grants read "more or less" with respect to quantity, yet that expression was interpreted by Charles, the second proprietor, to "extend to ten in the hundred, over or under, and no more;"[3] while by later proprietors the words "more or less" were entirely disregarded.[4]

In order to recover what he claimed as his just dues from such surplus, the proprietor instructed his surveyor general to make search and inquiry for the same, and, later, he offered a reward for its discovery. Whenever any was found, he caused a resurvey to be made in order to ascertain the quantity. Then, for a time, all that was necessary was to ask the grantee to take up the surplus according to the terms stated in the conditions of plantation that were in force either at the time of the original grant or at the time of the discovery of the surplus. But the time was not long in coming when the proprietor found that stronger measures were needed to accomplish his end. Accordingly, he had it proclaimed that any grant found to contain surplus should be vacated if the grantee did not apply for a warrant of resurvey, and take

[1] Sharpe's Correspondence, Vol. I, p. 53 *et seq.* [2] Kilty, p. 196.
[3] *Ibid.*, pp. 113, 114. [4] *Ibid.*, pp. 200–204; C. R., June 14, 1733.

up all such surplus on terms named by him.[1] But, even then, although Charles, the second proprietor, during his presence in the province, doubtless received a considerable return for surplus land, during the period of royal government laws were made for limiting the power of the proprietor in that particular; and although after the restoration of the proprietary government a similar law was lost by the lord proprietor's veto, resolutions of the lower house, together with looseness in the description of the original grants, destroyed the effect of those proclamations which were issued to secure the proprietor's right to surplus land.[2]

All land within the province, held as it was by socage tenure, was liable to escheat — an ancient term to which the proprietor gave a broad interpretation. The number of escheats found in the records is large, and there were many ways in which land might fall back, or escheat, to the proprietor, the most common of which were lack of heirs and non-payment of rent.[3]

The mode of proceeding, however, in respect to land alleged to be escheated, seems, during the early years of the colony, to have been fair and cautious. Whenever a person conceived any land to be escheatable, he presented a petition to the proper tribunal, praying that a mandamus might issue for the summoning of a jury to ascertain and declare on oath whether the land was escheated or not, and, if so, by what means. If the mandamus were issued, it was to the sheriff of the county in which the land in question lay, commanding him to summon and swear a jury of the neighborhood for the purpose stated in

[1] Kilty, pp. 200–204; C. R., June 14, 1733.

[2] Lower House Journal, June 1, 1739; Sharpe's Correspondence, Vol. I, p. 37 *et seq.*

[3] Kilty, p. 173 *et seq.*; see also Calvert Papers, No. 1, pp. 291, 297.

the petition, and to make due return of their inquisition and verdict. If, then, the provincial court, in view of the inquisition and verdict of the jury, decided that the land had escheated, the petitioner might apply for a warrant to resurvey it for his own benefit; and after the resurvey was made, and he had paid for the same, he learned on what terms he might acquire title. After the suspension of the proprietary government in 1689, the former regulation governing escheats was superseded by a much more arbitrary one; for the proprietor's chief agent, thinking that favorable terms were not to be expected under the newly established order of things, adopted the plan of selling land as escheats, without any condemnation or preparatory form. Out of this plan grew the established custom by which, if any one thought land to be escheatable for want of heirs, he might, and often did, venture the expense of a warrant and a survey, and then paid the price required to acquire title thereto. Title acquired in this way was good so long as suit was not brought by a claimant, and the land was proved not to be an escheat.

Not later than 1733 the proprietor began to encourage the discovery of land which had escheated, by offering to give one-third of it to the discoverer of any such, and the first chance to purchase the remaining two-thirds. But toward the close of the proprietary period the number of escheat warrants much decreased, while the weakness of the justices of the provincial court and the alert opposition of the lower house seriously threatened to strip the proprietor of all benefit from this ancient right.[1]

On the side of ownership, then, it is clear that before the American Revolution most of the essentials of a fief

[1] Gilmore Papers; Proprietary Papers; see also Proceedings of the Council, 1687–88 to 1693, pp. 102, 215, 219.

had lost their force in Maryland. The proprietary manors and reserves, — corresponding to the lord's demesne of the mediæval fief, — after a long period of unprofitable management of the former, were both gradually disappearing by a slow process of sale. The proprietor was unable, after the year 1738, to enforce his claim to surplus land, while his benefit from the disputed right to escheated land was doubtful. The attempt to erect manors for the largest tenants, and thereby to create a nobility on which he might rely for support, was given up before the close of the seventeenth century. Everything was, therefore, nearly levelled to the simple freehold from which the proprietor continued to receive his rents and some alienation fines.

So long as the province remained a true fief, the lord proprietor's territorial jurisdiction, and hence the land office, was for the most part his own private affair ; and such was the status until the Revolution of 1689. But during the period of royal government the fief received shocks from which it recovered only in part after the restoration of the proprietary government. Territorial jurisdiction, or the organization and administration of the land office, was therefore divided into three periods.

At the beginning of the first period and for several years thereafter nearly all business relating to land was attended to by the governor, council, and secretary. The governor was directed to pass all grants under the great seal, while the secretary was to record them. Both governor and secretary were to attend to the collection of rents, but sheriffs and the attorney general were soon asked to assist. Before the first colonists left England the lord proprietor had appointed a surveyor, but his commission does not appear in the records. For a time the secretary was the surveyor and had one or more deputies under him. In 1641 occurred the first appointment of

a surveyor general, whose office was somewhat of the nature of the steward of an English manor. During the first period he was always a member of the council of state, and was not so much expected to make surveys as to appoint surveyors and control their work. Until the appointment of an examiner general, in 1685, he signed the certificates of survey, and in 1658 his signature began to appear on all grants. In 1671 he was instructed to hold courts of inquiry once a year in each county for examining titles by which land was held, and for ascertaining whether any one possessed more land than was his due, and what rent ought to be paid; all information thus gained he was to enter in a book, make two copies of the same, send one to the proprietor and the other to the receiver general.[1] In 1670 the secretary was instructed to prove all rights to land; to inquire after, properly describe, and record all escheats; to enter clearly on record all the proprietary manors and reserves; to prepare a rent-roll, diligently to search all concealments of any of the proprietor's rents, and give notice of any such concealments to the proprietor and the governor; to give special attention to procuring the payment of alienation fines, and to have a list of alienations recorded.[2] In response to the proprietor's desire to have a list of escheats with the quantity, quality, and estimated value of each, the governor, in 1673 and earlier, directed each sheriff to return a list for his county.[3] Probably as early as 1671, and surely not later than 1676, the proprietor appointed two receivers general of his rents and other dues, and authorized them to appoint deputies.[4] In 1678

[1] Proceedings of the Council, 1667 to 1687–88, p. 94 *et seq.*

[2] *Ibid.*, p. 73 *et seq.*

[3] Calvert Papers, No. 1, pp. 291, 297; Proceedings of the Council, 1667 to 1687–88, p. 122.

[4] Proceedings of the Council, 1671 to 1681, p. 119 *et seq.*

the lord proprietor issued a proclamation ordering the justices of each county court to command the clerk of their court to transmit to the secretary's office a complete list of alienations of land within his county in order that the secretary and the receiver general might be able to make a complete rent-roll.[1]

The records show that with the year 1670 there began a decided increase of business activity in territorial affairs, and an earnest desire of the proprietor or his son, the governor, to increase the revenue. One consequence of such increased activity was doubtless the erection, in 1680, of a distinct land office. The secretary's chief clerk, under the designation of clerk and register, was placed in charge of this new office. He was intrusted with the care of the records, and authorized to prove rights, issue land warrants, and draw up grants for the same. Four years later, just before leaving the province, to which he never returned, Charles, lord proprietor, created a land council of four members, all of whom were members of the council of state. This new and special council he authorized to hear and determine all matters relating to land that should be brought before it. He also authorized two of its members, the secretaries of the province, to issue land warrants, and one of the secretaries with one of the other members to sign all grants. He gave the entire council instructions in matters relating to escheats, surveying, rent, leases, caveats, surplus land, issuing and recording grants, and grants illegally or surreptitiously obtained.[2]

Before the close of the first period, therefore, the land business had become thoroughly organized in what was

[1] Proceedings of the Council, 1671 to 1681, pp. 159, 160.

[2] Kilty, pp. 108–117; Proceedings of the Council, 1681 to 1685–86, pp. 254–260.

chiefly a private office of the lord proprietor, which office held jurisdiction over the keeping of the records, over everything pertaining to title to land, and over the collection of the revenue arising thereon.

The land council continued to transact its business until 1689, when the land office was closed and not reopened until 1694. During this interval, however, Henry Darnall, a cousin of the proprietor, and who, at the outbreak of the Revolution, was one of the deputy governors, a member of the council of state, a member of the land council, the receiver general, and the leader of what military resistance could be raised against the rebellion, was faithful and diligent as the proprietor's agent in protecting, so far as he was able, the proprietary interests. In 1695 he was not only continued as agent and receiver general, but also had conferred on him, so far as the proprietor was able to do so, all the powers and duties which had formerly been vested in the land council.[1] In 1712, Darnall having died, Charles Carroll, who for some time had been the proprietor's able solicitor and his register in the land office, was appointed successor to Darnall, and not only given all power necessary to make a firm stand for the proprietary rights, but also most liberally rewarded for his services.[2]

The commissions to Darnall and Carroll show that the proprietor continued to regard the land office, as established in 1684, entirely in the light of his own private possession. But when the royal government was established, that question was much fought over by the proprietor, his agent, and his solicitor on the one side, and the governor and council, the secretary, and the legislative Assembly on the other. The governor and council granted numerous petitions for a resurvey, and assumed much

[1] Kilty, pp. 127, 128.

[2] *Ibid.*, pp. 128–133.

of that right of judging and deciding disputes in land affairs which had formerly been vested in the land council.[1] The contentious secretary, Sir Thomas Lawrence, claimed the custody of all papers which were evidences of land titles; and he also claimed the right to issue warrants for survey and to receive the fees paid therefor. He even refused to allow the proprietor's agent to search the records before paying the ordinary fee. The governor, council, and assembly supported the secretary's claim to the custody of the records on the ground that the people interested and concerned therein should have access to them for inspection; and it was finally settled that the records should remain in the secretary's office, but that the proprietor's agent should have access to them free of charge for the purpose of amending the rent-roll.[2] But when the secretary still insisted on receiving one-half the fees for land warrants, the proprietor raised the purchase money on every hundred acres from 240 to 480 pounds of tobacco.[3] Such an increase of purchase money was equivalent to a change of the conditions of plantation, and as a consequence the legislative Assembly asked that the conditions of plantation and the proprietor's instructions to his agent should be made public. Then, too, the proprietor's claim to surplus land, and the vast amount of litigation between parties possessing adjacent tracts, caused much attention to be called to the incorrectness and carelessness with which surveyors had run their lines. It was easy, therefore, to raise a general complaint, charge the proprietor's surveyors with negligence and incompetence, and to

[1] Proceedings of the Council, 1687–88 to 1693, pp. 325, 340, 355, 389–397; Proceedings and Acts of the General Assembly, 1684 to 1692, p. 319 *et seq.*

[2] Kilty, p. 162; Proceedings of the Council, 1687–88 to 1693, pp. 356, 363, 387, 423; C. R., October 12, 1696.

[3] L. H. J., September 14, 1704.

assert that they were public officers.[1] Laws were accordingly passed for obliging the proprietor to publish his conditions of plantation and his instructions to his agent, for obliging surveyors to qualify according to law, and for ascertaining the bounds of land.

The result, then, of the contention during the second period in the development of the land office over the question of what were its public and what its private relations, indicated that the settlement of judicial questions relating to title, the custody of the record of titles, and some control over surveying were public, while little more than those most essential for securing the legitimate revenue were private in nature. This meant that the proprietor was no longer to be regarded as the absolute lord of a fief, but that with the exception of his having a few extra and unusual sources of income (and even the right to those was already disputed) he was only the chief landholder within the province.

Immediately after the restoration of the proprietary government a new commission was issued to Carroll, appointing him "chief agent, escheator, naval officer, and receiver general of all our rents, arrears of rents, fines, forfeitures, tobaccos, or monies for land warrants; of all ferrys, waifs, strays, and deodands; of all duties arising from or growing due upon exportation of tobacco aforesaid, tunnage of ships, and all other monies, tobaccos, or other effects," and also authorizing him "to sell or dispose of all lands, tenements, or hereditaments to us now escheated or forfeited."[2] Although there was no power conferred by this commission that the agent might not

[1] Proceedings of the Council, 1687–88 to 1693, p. 396; Upper House Journal, November 9, 1709; L. H. J., May 10, 1695, May 1, 9, 11, September 23, 1696, May 31, 1697, July 8, 1699, December 6, 1704, May 15, 1705, April 5, 6, 11, 1706, April 9, 11, 12, 1707.

[2] C. R., July 10, 1716.

have formerly exercised, yet Governor Hart, by nature shallow and irritable, was made furious when he learned that the new Protestant proprietor had permitted a strong influential Catholic to retain so much power. He told the Assembly that he must resign if Carroll retained the commission, since his own power would be too much weakened by the insufficient number of offices remaining at his disposal with which to reward those faithful to the proprietor's interest.[1] The Assembly, supporting the governor, held that the offices of escheator general, naval officer, and receiver general required the holder or holders thereof to take the oath; that the office of escheator general was one of record and related to the administration of justice; and that no private employee of the proprietor should receive the fines imposed by acts of assembly. Accordingly, the two houses of assembly sent a joint petition to the proprietor, praying that the governor be restored to full power.[2] This action of the governor and Assembly, rather than the commission, must have enlarged Carroll's idea of his power and persuaded him to think of himself as the first officer of the province; for he at once took it upon himself to fix the salary of the governor and to advise him not to give his assent to some bills that were awaiting his signature.[3] Carroll seems to have retained his powers as agent, but he was not continued as register of the land office; and instead of becoming the first officer of the province, the importance of the office of agent was greatly reduced between 1717 and 1733 by the law, existing during that interval, which gave an equivalent for the proprietor's quit-rents and alienation fines by imposing an export duty on tobacco.

When the law expired in 1733, the importance of the

[1] U. H. J., July 20, 1716. [2] *Ibid.*, July 30, 1716.
[3] *Ibid.*, August 9, 1716.

office of agent revived, but none of the successors of Darnall and Carroll were men of such diligence and faithfulness; and the private interests of the proprietor, apart from the receipt of the tobacco duty, were so completely neglected during the continuance of that law that they never fully recovered. The rent-rolls fell into confusion by disuse, the bounds of proprietary manors were encroached on, and the complaint was raised that the tenants on those manors seldom paid their dues.[1] In the effort to restore order, the governor was instructed to assist and advise with the agent in farming the quit-rents or appointing receivers. The governor was also to appoint rent-roll keepers to whom the quit-rent farmers should be obliged each year to return the rent-rolls; and with the advice of the agent he was to lease the proprietor's manors and reserved lands and appoint such stewards or other officers as should be thought convenient.[2] But the work was difficult, and in 1733 the governor wrote that the trouble about land affairs was ten times as great as that about all other matters whatever.[3] In 1737 the negligent management of the agent appeared from the fact that he was unable to find some of the proprietor's instructions to him; while the activity of the lower house appeared in its investigation of numerous charges of extortion against farmers and receivers of the rents.[4] In 1745 the governor yielded to the request of the lower house for an account of the proprietor's income from quit-rents.[5]

While the publicity thus increased, the confusion and neglect continued; and in 1764 the secretary bitterly complained that, owing to loss of deeds and copies of leases, the proprietor, in trials at law, suffered heavy

[1] Calvert Papers, No. 2, pp. 79, 83.
[2] C. R., June 18, 1733.
[3] Calvert Papers, No. 2, pp. 89, 90.
[4] L. H. J., May 4, 1737.
[5] *Ibid*, September 10, 1745.

loss from defeat.[1] None of the agents was so delinquent as David Lloyd. At one time the secretary wrote that the proprietor had heard nothing from Lloyd for fourteen months. On different occasions the governor also wrote how Lloyd was at one time £8000 behind in his remittances; of the proprietor's loss on account of Lloyd's unmethodical way of doing business; and how Lloyd, living so far away on his own vast estate, was hardly able to attend to the proprietor's business.[2] Frederick, who was at that time the proprietor, a conceited voluptuary and spendthrift, bitterly complained of the ignorance in which he was kept by his agent with respect to his business interests in Maryland, and at one time declared his intention of visiting the province in order to seek relief from the financial loss and the humiliating embarrassment in which he was placed as a consequence of his inability to answer business and social inquiries made by parties in England.[3] For a long time he desired that Lloyd would resign, but from fear of offending such an influential person, refrained from asking him to do so. It is not improbable that the proprietor was kept from visiting the province by fear of his unpopularity. Instead of doing this, he sought to improve the organization of the agent's business, and made him accountable to a board of revenue. This brought about the much desired resignation of Lloyd. The proprietor also strove to get what he could from the province by ordering the sale of his manors and reserved lands. This three-fold movement began in 1760, when instructions were sent to Lloyd to purchase or build, with the advice of the governor, a house to be called the office

[1] Sharpe's Correspondence, Vol. III, p. 137 *et seq.*

[2] *Ibid.*, Vol. II, p. 62 *et seq.*, Vol. III, pp. 208, 215 *et seq.*, 241, 257, 316, 375, 382.

[3] *Ibid.*, Vol. III, p. 273.

of the receiver general. In this office he was directed to put all counterparts of leases of manors and reserved lands, all bonds and agreements with quit-rent farmers, all plans of manors and reserved lands, and all accounts of stewards, tenants, and rents; to have the terms of manors and reserved lands, leases, and fees for surveying published in every county, so as to prevent any imposition by stewards; to oblige the naval officers to render account on September 29 of each year; and to submit his own accounts to the auditing of the board of revenue.[1] As usual Lloyd was slow to comply with his instructions, and it was nearly six years before the building for the office was completed: but after the first auditing of his accounts he resigned. His resignation, however, was no immediate gain; for the proprietor's appointment of his own intimate friend, the renegade Bennet Allen, as his successor, only showed how unfit the proprietor was to be at the head of a state, and how undeserving he was of the respect of the people. Yet Allen did not long serve as agent.[2]

In 1766, the year in which the building for the receiver general's office was completed, the board of revenue was appointed and directed to inspect Lloyd's accounts and make regulations for his office. The members of this board were the governor, commissary general, deputy secretary, attorney general, and judges of the land office. Its membership, therefore, included the leading public officers. It was given access to every office and control over every officer who had anything to do with the land business or with the proprietor's revenue. It was instructed to furnish the proprietor annually with an exact detail of every branch of his revenue, and to give the reward paid for each service of every officer. In executing

[1] Calvert Papers, No. 652. [2] Minutes of the Board of Revenue.

its instructions the board audited the accounts and revised all instructions to the various officers; among which, when revised, were instructions under thirty-three heads to the agent, under twenty-three heads to the deputy surveyors, under sixteen heads to the receivers, under fifteen heads to the judges of the land office, under nine heads to the rent-roll keepers, besides others to the examiner general, attorney general, commissary general deputy commissaries, sheriffs, clerks of the provincial and county courts, and naval officers. When revised they were sent to the proprietor for his approval, together with a recommendation that a new commission be issued to the board of revenue for more precisely pointing out its duties and defining its powers. The board met three times a year, and must have exercised an effective control not only over the private, but also over the public, relations of the land office.[1]

Thus far, therefore, it appears that the land office was chiefly private before the Revolution of 1689; that during the period of royal government there was a more marked division of it into public and private relations; and that after the restoration of the proprietary government, so far as private relations were concerned, it fell into an extremely neglected and confused condition. But so alarming did the confusion become, that the proprietor, and more especially his uncle, the secretary residing in England, was aroused to effective action; and by the shrewd business energy of the latter the proprietor's well-organized control threatened again to become supreme in every department of the land office. Doubtless such a threat was one of the chief causes of provoking the final and most spirited controversy over the question of the public and the private nature of that office. But attention must

[1] Minutes of the Board of Revenue.

be given to the development of the public relations during the last period before an account of that controversy can be made clear.

It has been seen that during the period of the royal government the management of the land office lay chiefly with the secretary ; yet the agent retained the less public part of the records and the title of register of that office. At the time of the dispute between Governor Hart and Agent Carroll the office of register was united with that of the secretary. In 1717 Philemon Lloyd, the deputy secretary, appointed Edward Griffith register and keeper of the land records, while he retained for himself the power of granting land warrants and of preparing land grants. Four years later the proprietor constituted Lloyd judge of the land office, and authorized him to hear and determine differences arising between contending parties in land affairs as far as legally he might, "according to right, reason and good conscience."[1] In 1733 Edmund Jennings, the new secretary and judge of the land office, received a set of instructions under nineteen heads. According to those instructions he was to receive the assistance of the chancellor in the determination of all disputes that came before him as judge of the land office ; he was not to permit any land warrant to issue until the agent or the chancellor had certified in writing that the purchase money had been paid ; he was annually to furnish the rent-roll keepers with a record of all lands granted ; he was to give the county clerks directions to be very exact in transmitting to the agent the alienations every year ; he was to inform the attorney general with respect to any surplus land ; he was to insert in every grant a proviso that the grant should become void on the non-payment of rent ; and to the discoverer of escheated land

[1] Kilty, p. 269.

he was to allow one-third the value thereof.[1] From 1746 to the end of the proprietary government there were two judges of the land office, which had become detached from that of the secretary. The judge was always commissioned as judge and register, but he always appointed another as register. After the creation of the board of revenue an appeal lay from the decision of the judges of the land office to that board, whereas before that time the appeal was to the governor, either as such or in the character of chancellor.

The judges, the register of the land office, and the agent, instead of the surveyor general and the secretary, had now become chief officers in territorial affairs; and the method of acquiring title to land had become quite different from what it had been in the first period. In the later years, when a person desired to obtain a grant of some vacant land he applied to the agent, who, upon such person's paying down the purchase or caution money, gave him an order to the judges of the land office for a common warrant. Whereupon the register of the land office made out such warrant, which, when signed by the judges and stamped with the official seal, was directed to the surveyor general. In pursuance of this warrant the deputy surveyor of the county in which the land lay surveyed the land and returned to the examiner general a certificate of survey describing the situation of the land and the bounds thereof. After the examiner general was satisfied that the description had been properly made, and that every part of the certificate was in due form, he endorsed it and returned it to the land office. After a patent had been prepared and the chancellor had passed the same by signing his name and ordering the great seal of the province to be affixed to it, the patentee might take

[1] Kilty, pp. 232–234.

it out of the office. Then, in December following, the judges of the land office, the surveyor general, the deputy surveyor, the examiner general, and the chancellor made out their several accounts against the patentee for fees due to them; which fees the sheriff was directed to collect in the summer following.

If a person applied for land that was cultivated by some one who had no right thereto, or that was contiguous to a tract which he already possessed, he had first to petition the judges of the land office for a special warrant to survey the particular tract or parcel, or he petitioned to resurvey the tract he was already possessed of, and to add thereto the contiguous vacant lot. The special warrant or warrant for resurvey might then be issued, signed, and sealed after the same manner as a common warrant, and directed to the deputy surveyor, who, after the survey, returned to the examiner general the certificate giving a particular account of the improvements. After the certificate had been passed by the examiner general and returned to the land office, the petitioner carried it to the agent to whom he paid the caution or purchase money and what was demanded for improvements. The sum paid was endorsed by the agent on the certificate, after which a patent was granted as in case of a common warrant.[1]

Although it is evident that the organization and administration of the public side of the land office were systematic and regular, and gave general satisfaction, the same cannot be said of the private side; and the representatives of the people sometimes either felt that they had cause for complaint or else were jealous of their rights and asked for more publicity. Notice has already been taken of the governor's granting the request of the lower house for an account of the proprietor's quit-rents. In 1729 the lower

[1] Sharpe's Correspondence, Vol. II, pp. 404–406.

house resolved that it was a grievance, and of dangerous consequence to the people that the conditions of plantation on which they held their estates were not made public.[1] In 1740 the committee on grievances reported that the agent's commission had not been recorded. Both committee and lower house held that it ought to be, on the ground that the office of agent was a public one with respect to the people and their interests, and that, if the commission were not recorded, they could not be certain of receiving due credit for payments made by them to discharge their rents and other dues.[2]

In 1729, upon complaint raised in the lower house against the power exercised by Philemon Lloyd as judge of the land office, that house resolved itself into a committee of the whole to examine into the charges, and sent for all papers, records, and persons necessary to throw light on the affair. After its examination this committee found that Lloyd, upon petition and entry of caveats, had heard and determined several controversies concerning the granting of land. It also found that when a person had obtained a land warrant and paid the necessary dues, his patent might be stayed by the entry of a caveat against the granting of the patent until the parties had been heard before Lloyd, unless such caveat were withdrawn, or the party entering the same neglected, upon summons or notice, to appear. Although the house did not approve of such large judicial power being in the hands of one man entirely dependent on the lord proprietor, yet, when it found that such had been the custom from the earliest time, it voted to make no further inquiry.[3]

The animosity of the lower house with respect to the land office was most thoroughly aroused in 1770 at the

[1] L. H. J., August 5, 1729. [2] *Ibid.*, July 23, 1740.
[3] *Ibid.*, July 24, 30, 1729.

very time when, through the work of the board of revenue, the proprietor's control of the land office seemed to be growing strong again. Moreover, it was the time when the feeling of the lower house was bitter against the members of the board of revenue because those members were also the leading officers of the government, and because, as the lower house claimed, they were becoming independently rich and powerful by receiving too large fees. After the law regulating fees had expired, the judges of the land office instructed their clerk to continue to charge according to the old regulation. As a consequence of following such instruction, the lower house committed the clerk to prison. In order to effect his release the governor prorogued the Assembly on the day following his commitment. Later in the same month he first published a paper for the regulation of fees in the land office, and then issued a proclamation for the regulation of all other officers' fees. He made this distinction, as he afterward stated, because he regarded the judges and register of the land office as the private agents of the proprietor, rather than public officers.

Such a course, pursued by the governor after the lower house had sent the clerk of the land office to prison, provoked a lively debate. The lower house went so far as to assert that the lord proprietor had no right to dispose of his vacant lands upon terms different from his former proclamations, nor to settle the fees paid for services performed in the land office.[1] Furthermore, with respect to the public or private nature of that office, the house thus expressed its view to the governor: "A question of momentous concern to the people of this province may arise, whether the land office is a public or private office? . . . The land office, sir, is the public repository of

[1] L. H. J., November 21, 1770.

the first and most necessary evidence of every man's title to his real estate in this province; the whole records have been made up, so far as we can trace, at the expense of the people. These records have been considered as public records, kept under securities appointed by acts of assembly; and office copies are constantly received and admitted as evidence by the courts of justice. It very much concerns the landholders in this province, to know by what tenure they hold their estates; if they have no right to recur to the land-office records and have copies but at the will of his Lordship or on the terms his Lordship may be pleased to allow them, they indeed are in all cases, where copies are necessary to evidence their titles, only tenants at the will of the proprietor, and those necessary copies may be withheld till the proprietor receive the profit of another sale."[1]

The governor conceded that in so far as the land office was the repository of the muniments of the tenants' estates, it was a public office, and the people of Maryland were entitled to have access to it as well as to other offices. But he held that the lord proprietor had the clearest right to dispose of his real estate on such terms as he saw fit, the clearest right to direct the formal observances used in making titles to his grants, and the clearest right to settle the fees paid for services performed in the land office.[2]

The controversy, remaining unsettled, was only lost sight of in the great struggle with the mother country. Had the proprietary government continued longer, Governor Eden, a social favorite with winning ways and political tact, would doubtless have delayed the final and complete defeat of the lord proprietor. As it was, before the overthrow came, the indications were strong that the

[1] L. H. J., November 22, 1771. [2] *Ibid.*, November 30, 1771.

proprietary land — the lord's demesne — was soon to disappear, and that the proprietor's right to escheat was to be lost. The manorial system for the large tenants had long since been abandoned. Governor Eden had conceded that the land office was public in nature with respect to the custody of the records.* The question of public or private control in acquiring title was, therefore, about the only one yet remaining to be solved.

CHAPTER II

TERRITORIAL REVENUE

All territorial revenue was the proprietor's private income and was, of course, feudal in nature. Even during the period of royal government such revenue continued to be paid to the proprietor or his agents. A great part of it did not circulate in the province after it had been collected, but was sent to the proprietor in England. The rates of it, from the most important sources, were from time to time increased as much as the proprietor thought expedient.

The people felt that too much money was drained out of the province to enrich a non-resident. On several occasions they sought information as to the amount of that revenue, or some branches of it. They contended that the rates of it, when once fixed, should remain unchanged except with their consent. They sometimes complained that the farmers or receivers of certain branches of it were extortionate. And as the feudal system was gradually outgrown in the mother country, they endeavored to eliminate the most objectionable sources of such revenue.

The most important sources were the purchase money paid for either vacant or improved land, quit-rents, alienation fines, ferry money, and port duties.

At the beginning, one hundred acres of land were granted to or for any person, between the ages of sixteen

and sixty, who came and settled in the province. But it was only a few years before the amount granted on those conditions was reduced to fifty acres. In the year 1683 the proprietor ceased to grant any land whatever merely on condition of settlement, and demanded that a price at the rate of two hundred pounds of tobacco for every hundred acres should be paid, as the condition of a grant. The next year that rate was raised to two hundred and forty pounds of tobacco, and it has already been seen how, during the period of royal government, the rate of the year 1684 came to be doubled.[1] In the year 1717 the rate was changed to forty shillings sterling per hundred acres; and in the year 1738 it was raised to £5 sterling per hundred acres, which was the rate existing at the time the proprietary government was overthrown.

In the year 1744 the committee on grievances complained that the purchase money for vacant land in Maryland was £5 sterling per hundred acres, whereas in Virginia it was only ten shillings for the same quantity. This committee was also keenly conscious of the fact that in Virginia such revenue remained in the country, while in Maryland it passed out from the circulation within the province.[2] From the close of the seventeenth century there had existed a feeling that the terms on which the proprietor granted land, when once fixed, should continue unchanged.

Escheated land, always including what improvements had been made upon it, was sold either to the discoverer of it at two-thirds of its estimated value, or it was disposed of at a public sale to the highest bidder, and the discoverer was given one-third of the amount thus received.[3]

In 1764 the proprietor directed that his manors and

[1] See *supra*, p. 62. [2] L. H. J., May 25, 1744. [3] Kilty, p. 234.

reserved lands should be sold at a price not less than £50 sterling per hundred acres. But in 1766 his instructions for the sale of such lands directed that they should be sold to the highest bidder, provided the bid was equal to £30 sterling per hundred acres for what was uncultivated, or £100 sterling per hundred acres for what had been cultivated and improved.[1]

The quit-rent reserved in grants due in 1633 was regularly twenty pounds of good wheat for every hundred acres, but it was increased in the grants due the following year. In 1642 the quit-rent for future grants was changed to two shillings for every hundred acres. In 1658 the proprietor gave instruction that the quit-rent reserved on every grant of a manor should in the next year be increased to four shillings sterling for every hundred acres; and in 1660 he gave instruction for a like increase to be reserved on other grants.[2] But Fendall's rebellion broke out in 1659, and even after its suppression, such an opposition to the government continued that the quit-rent of two shillings sterling remained unchanged.[3]

However, in the year 1669, came another instruction from the proprietor directing that the quit-rent be increased.[4] The next year the right of voting at an election of members of the lower house was taken from such freemen as did not possess at least fifty acres of land, or a visible personal estate worth £40 sterling. After such restriction of suffrage, but in only a few cases before it, were the quit-rents increased to the four shillings rate.

The first session of Assembly that was called after an

[1] C. R., February 21, 1766.

[2] Proceedings of the Council, 1636 to 1667, pp. 458, 459.

[3] Land-office Records.

[4] Proceedings of the Council, 1667 to 1687–88, p. 55.

election had been held under the new regulation of the suffrage passed an act imposing an export duty on tobacco of two shillings per hogshead. One-half of that duty was to be given to the proprietor as a recompense for the heavy expense he had incurred in founding the colony, provided he accepted good tobacco at twopence per pound, in payment of his quit-rents and alienation fines. The market value of tobacco during the continuance of that act seldom exceeded one penny per pound — so the twelvepence per hogshead was by no means a straight gift. The act was to continue during the life of the proprietor, Cecilius; and it was later continued during the life of his successor, Charles. Even after the overthrow of the proprietary government in the year 1689, the twelvepence were given to the proprietor. But the Assembly, after the royal government had been established, asked in return for the twelvepence that the conditions of plantation, which were in force before the revolution, should remain unchanged, or, at least, not be made less favorable than those in Virginia.[1]

On February 20, 1714–15, Charles, the second proprietor, died, and his immediate successor, Benedict Leonard Calvert, survived him only two months. Wherefore, in April, 1715, Charles, the son of Benedict Leonard Calvert, became fourth proprietor. In the same year, 1715, a law was made to enlarge the size of tobacco hogsheads nearly one-fourth; and an offer of a duty of eighteen pence per hogshead was at the same time made to the new proprietor, on condition that he would continue to accept payment for his quit-rents and alienation fines in tobacco at twopence per pound.[2] The offer was refused, and the next year it was reported that the proprietor and his guardian

[1] Proceedings of the Council, 1687–88 to 1693, p. 361.
[2] U. H. J., May 30, 1716.

had leased his rents for six years to Henry Darnall for £300 sterling and sixty-seven thousand pounds of tobacco per annum.[1] The Assembly preferred to give the proprietor a duty of two shillings per hogshead, as a full equivalent for both the quit-rents and alienation fines, rather than give the sums stated in the lease to Darnall. Accordingly, Darnall gave up the lease, the proprietor accepted the two shillings offer, and the terms of that offer were inserted in a law which was continued in force by successive revivals until 1733.

Such a law did away with the expense of keeping up the rent-rolls, which, in 1716, were estimated at ten thousand pounds of tobacco per annum; and it otherwise much decreased the expense of collecting. It must also in time have proved beneficial to the country by its encouragement of the raising of other products than tobacco. Yet each party to the agreement soon came to think or to fear that the other had too good a bargain. Thus, while the law was before the lower house for its first revival, in 1720, that body acknowledged its advantages, but was ill at ease because it felt that the proprietor had the better opportunity to make a comparison between the value of the rents and the income from the two shillings duty.[2] While, on the other hand, in 1726, Governor Charles Calvert, a relative of the proprietor, informed the Assembly that in his opinion the income from the two shillings duty did not exceed one-half the gross value of the quit-rents and alienation fines if paid according to the terms of the grants; and that nothing but the proprietor's tender regard for his tenants could induce him to consent to a longer continuance of the law.[3]

The following year, Benedict Leonard Calvert, a brother

[1] U. H. J., July 24, 1716. [2] L. H. J., April 8, 1720.
[3] *Ibid.*, July 14, 1726.

of the proprietor, became governor. The unprosperous times, owing to the bad condition of the tobacco trade, continued; and the opposition to the proprietor was increasing, this being due largely to the bitter controversy over the question of the extension of English statutes to Maryland. The governor's health was miserable; he felt that the people were getting control of the government, and he wished to avoid an increase of trouble. As the time for the fourth revival of the law which granted the equivalent for quit-rents and alienation fines drew near, in 1729, he wrote how jealous the people were growing because they thought the proprietor had too good a bargain, while the proprietor continued to hold that the quit-rents due according to the terms of the grants vastly exceeded the equivalent. The governor thought there was an error in computation on both sides, and prayed for a continuance of the law. He held that the people could not find an easier way to pay their rents, that the law was especially favorable to the poor, and that its encouragement of husbandry was a great benefit to so young a country. He thought that the rent-rolls would not amount to more than £6000 sterling per annum, and if it could be collected, a great allowance should be made for charges and losses in collection. "But alas," he concluded, "they cannot be collected. There is not money enough here to be got to make regular payments from time to time, so that your officers must take corn, wheat, beef, pork, tobacco, or some commodity of the country, the conversion whereof into money, and from money into bills, must be a vexatious, expensive, and almost an endless and insuperable task."[1]

The law was revived in 1729 for three years as usual; but in 1732 it was revived for one year only; and in 1733

[1] Calvert Papers, No. 2, pp. 72, 73.

the bill for reviving it failed to pass in the lower house by a vote of twenty-one to twenty-six.[1] The delegates from the city of Annapolis and the four western counties — those least adapted to tobacco culture — gave seventeen of the twenty-six negative votes. Such a vote, therefore, would seem to indicate that the general opposition to the proprietor or his government was already much the strongest in the more newly settled parts of the province, otherwise the opposition to the bill would have been expected to come from the tobacco-producing counties.

Before the expiration of the law, Samuel Ogle, a more able and successful administrator than Benedict Leonard Calvert, had become governor. The controversy over English statutes had been adjusted. Moreover, the proprietor, by a visit to the province at that time, seems to have strengthened his position. So, although the difficulty of revising the rent-rolls and the trouble in collecting the rents were doubtless great, yet it was the people that soon expressed regret for the loss of the equivalent. After an election of a new lower house of Assembly, that house, in 1735, complained of the great scarcity of money in circulation with which to pay the rents, and asked the upper house to join with them in an address to the proprietor concerning another equivalent.[2] That address, prepared in the lower house, was an humble confession of the mistake that had been made, and is a clear representation of the situation at the time it was written. It is therefore here inserted.

"We acknowledge with the deepest sense of gratitude that the agreement which your Lordship condescended to enter into with your tenants to raise a duty on tobacco in lieu of your quit-rents and alienation fines was a very great ease to them, and nothing could have been more to

[1] L. H. J., April 3, 1733. [2] *Ibid.*, April 15, 1735.

their advantage than a continuance of that agreement which your Lordship and our present Governor on your behalf was pleased to offer, and which the Assembly, through a mistaken notion of the country's interest, refused to accept of.

"The difficulty which the people labor under now they are obliged to pay their money according to the tenor of their grants far exceeds what could have been imagined or foreseen, and must of course increase in proportion to the scarcity of money in the country and will prove very detrimental if not ruinous to many of the inhabitants of this province. To avert which evils we are obliged thus humbly to apply to your Lordship and to beseech you to commiserate the unhappy condition to which your tenants will certainly be reduced and to accept of a sum of money to be raised in the best and easiest manner it can be by the legislature in lieu of your quit-rents and alienation fines, and that your Lordship will be pleased to give instructions to His Excellency the Governor or directions in such other manner as your Lordship shall think fit concerning this important affair." [1]

The next year an offer from the lower house of an export duty of two and a half shillings per hogshead, as an equivalent, was rejected by the upper house; and a little later another offer from that house of £4000 sterling per annum, although agreed to by the upper house, was refused by the proprietor. Eight years later the lower house asked the governor to submit to the proprietor its offer of two and a half shillings per hogshead for seven years; [2] and when, in the following year, the governor made known the proprietor's refusal of that offer, the lower house asked what the proprietor or the governor judged a reasonable equivalent, and requested that an account of

[1] L. H. J., April 23, 1735. [2] *Ibid.*, May 26, 1744.

his annual receipts from quit-rents be laid before them. Whereupon the governor stated that the proprietor thought no equivalent reasonable under £5000 sterling per annum; and in response to the repeated request of the lower house he gave it the desired account.[1] A bill for raising the £5000 sterling per annum then passed both houses. But the governor, as he had threatened, withheld his assent to it as well as to other favorite bills of the lower house, because no bill had been passed providing a fund for arms and ammunition.[2] Such was the last attempt that appears in the records to agree upon an equivalent.

The proprietor must have felt that no equivalent in the form of a fixed annual sum could be agreed upon that would be advantageous to him; and it is probable that he intimated that he might accept an equivalent of £5000 sterling with no other end in view than to keep under control an opposition that had been rather violent since 1739. His most reliable and most able supporter in the province, Daniel Dulany, wrote in 1736: "I am persuaded that when all the lands under grant in the Province are brought to the rent-roll that the quit-rents will amount to about £8000 sterling per annum, besides alienation fines which must increase and can never decrease."[3] The proprietor stated that the raising of an equivalent might lay too heavy a burden on the tobacco trade.[4] Experience had taught him that, even if an equivalent were agreed upon for a term of years, it would not be advisable for him to save the expense of keeping up the rent-rolls. He knew that, so long as the granting of land continued, his income from quit-rents would increase, while, also, he

[1] L. H. J., August 28, September 3, 5, 10, 11, 1745.

[2] *Ibid.*, September 24 and 28, 1745.

[3] Dulany Papers.

[4] L. H. J., April 20, 1736.

felt that as the people gradually became reconciled to paying according to the tenor of the grants the difficulties and expense of collecting would decrease.

In 1733 the quit-rent to be reserved in future grants was raised to ten shillings for every hundred acres; five years later, when the purchase money per hundred acres was raised from four shillings to £5 sterling, the quit-rent was reduced to four shillings, but in 1753 the proprietor again gave instruction that it be restored to ten shillings. The governor held that the ten shillings rate was too high, whereupon, the next year, the proprietor left it with the governor, agent, and judges of the land office to reduce it if it seemed advisable; and the rate thereafter seldom exceeded eight shillings for every hundred acres.

Nothing appears in the records with respect to alienation fines previous to the year 1658, when the conditions of plantation issued in that year required that upon the alienation of any land to be granted to a tenant there should be paid to the proprietor a fine equal to one year's rent for the same land. If the alienation were not duly recorded and the required fine paid within one month thereafter, the alienation was to be void.

But the attempt to enforce such a provision caused considerable difficulty, especially during the middle of the eighteenth century; and as early as the eve of the Revolution of 1689 a list of grievances appears to have been headed with a charge that officers made illegal demands in receiving alienation fines.[1] After the expiration of the law which provided the equivalent for quit-rents and alienation fines, the lower house raised an effective opposition to paying the alienation fine on land devised;[2] and

[1] Proceedings and Acts of the General Assembly, 1684 to 1692, p. 203.
[2] L. H. J., May 28, 1739.

in 1742 the proprietor directed that his agent and receivers should not take any fine on or for any land which had been aliened by devise.[1] In the case of all other alienations, however, the proprietor seemed determined to preserve his right.

In 1760 he complained that his income from alienation fines was notoriously trifling. As a consequence, he gave instruction that in future grants a clause should be inserted which was intended to provide that, whenever the alienation fine was not paid within two months after it became due, not only should the grant be void, but the proprietor might enfeoff the land described therein to others. Further, the governor and the upper house were asked to endeavor to secure an amendment to the law for the conveyance of land whereby, before the recording of the deed, the payment of the alienation fine should be required. Secretary Calvert, the proprietor's uncle, recommended, as the best way to settle the controversy over alienation fines, that a case or two of that kind should be brought in the provincial court, or that a bill be filed in Chancery, and that, if necessary, appeal be made to the king in Council.[2]

Daniel Dulany, Jr., the ablest lawyer in the province, held that the clause which the proprietor asked to have inserted in his future grants would not answer the end designed so as to revest the land in the proprietor upon the non-payment of the alienation fine. The prudent Governor Sharpe was of the opinion that to vary at that late day the form of the condition in the grants relative to lands reverting to the proprietor for the non-payment of the alienation fine, might be said by the opposition to proceed

[1] C. R., October 20, 1742; Sharpe's Correspondence, Vol. II, p. 503 *et seq.*

[2] Sharpe's Correspondence, Vol. III, p. 143.

from a consciousness that the old conditional clause of forfeiture was really defective.[1] But while Dulany is reported to have represented that the legislative provision for requiring the payment of the alienation fine was unnecessary — on the ground that the Chancery Court had sole cognizance in such matters, — Governor Sharpe feared that if he, as chancellor, were to give his decision in a case of that kind, there might follow an uprising of the anti-government party when the feeling should spread that he was not at liberty to give a decree against the proprietor. After two years of effort, therefore, the passage in the lower house of a compromise bill was secured; and there the controversy over alienation fines seems to have ended.

In Maryland, the long narrow bay, and the numerous rivers, over which there was long delay in building convenient bridges, made it highly desirable that social and commercial intercourse should be facilitated by well-regulated ferries properly adapted to the transportation of men, wagons, horses, and cattle; and as the population increased, the earnings of ferrymen might have been considerable. But a disagreement of proprietor and people, first arising in 1741, with respect to ferry licenses, caused the regulation of ferries, and all conveniences relating to that means of transportation, to remain grievously defective.

Legislative activity for providing the province with ferries began as early as 1638, and twenty years later every county court except that of Kent County was directed by act of assembly to select some place within its jurisdiction for keeping a ferry, and to assess the county for the purpose of providing a boat and paying a ferryman. Although that law was to continue but three years, and was not revived, yet to the county courts was left full con-

[1] Sharpe's Correspondence, Vol. III, p. 203 *et seq.*

trol over ferries until 1741. But it was at that very time that the remote western districts of the province had just begun to develop rapidly. In that year the proprietor, Charles Calvert, authorized his agent to select suitable places for ferries, ordered that no one should keep a ferry without a license, stated for what services the boats should be fit, and fixed the rates which ferrymen might charge. For the license, when first obtained, and for its renewal each year, a fixed sum of money was to be paid to the agent for the proprietor's private use. But soon after such action became known, the committee on grievances made complaint against the license money that was demanded, and stated that, although the proprietor had fixed the rates, yet ferrymen charged whatever they pleased, and that frequently their charges were exorbitant. Further, the committee stated that in Virginia ferries were regulated by acts of assembly, and that the determining of ferrymen's charges by the proprietor was most arbitary and illegal, and tended to alienate the affections of the people from his government.[1] The next year a bill was introduced in the lower house for the regulation of ferries. But in the meantime such a clamor had been raised against the proprietor's attempt to regulate them, and to obtain money from ferry licenses, that he gave up the attempt; and it is probable that it was on account of his doing so that the ferry bill failed to pass in the lower house by a vote of twenty-nine to fifteen.

Charles Calvert never renewed that attempt; but in the year 1753, his successor, Frederick, ordered that the governor, the judges of the land office, and the secretary should, if possible, lease the several ferries to the county courts for a lease fine, and an annual rent.[2] Just what was the outcome of that instruction does not appear. But

[1] L. H. J., June 12, 1741. [2] C. R., 1753.

two years later Governor Sharpe spoke unfavorably of the proprietor's conduct with regard to ferries; and until the final overthrow of the proprietary government some ferries were kept by order of the county courts, and others by private persons.[1] In the case of the former the justices of the county court levied a sum of tobacco on the county for paying the ferryman, and the ferry was free for the inhabitants of that county. In the case of those kept by private persons, the keeper demanded of passengers whatever he pleased; and what he demanded had to be paid or conveyance was refused. The need of a regulation of ferries must have kept increasing. "But," said the governor, "the people will never vest the proprietor with the right and power of granting licenses, and he will not pass a regulation bill without it."[2]

The power "to make, erect, and constitute" ports, to have all "rights, jurisdictions, liberties, and privileges" with respect to such ports, and to "have and enjoy the taxes and subsidies payable" in the same, was, by the charter, given to the proprietor. The first act of assembly that imposed a port duty was passed in the year 1650, and was entitled, "An order for the reëdifying of the fort of St. Inigoes." Its purpose was clearly defence. It provided for strengthening a fort that had already been constructed at the port of St. Inigoes. Toward defraying the expense, it levied a duty of one half-pound of powder and two pounds of shot, or the equivalent in value, on every ton burden of every vessel trading with the province, but not belonging in it, that had a deck or a deck flush fore and aft. Although the duration of the act was not limited, it was superseded in the year 1661 by another which was entitled: "An act for port duties and

[1] Sharpe's Correspondence, Vol. II, p. 509.
[2] *Ibid.*, Vol. I, p. 236.

masters of ships." The first act was a mere ordinance of the General Assembly; the second act was a law requiring the lord proprietor's assent. In the second act, while the duty was raised to one half-pound of powder and three pounds of shot, the idea of defence was, to say the least, much less prominent. Again, by the first act, the duty was to be employed by the governor for the use of the fort, and for such other necessary and general uses as he should think fit; while by the second act it was directed that the duty should be paid to the lord proprietor and his heirs, and nothing was said about the use for which it was to be employed.

As there arose no urgent need of fortifying the ports of Maryland, the proprietor received the payment of the duty, in money, for his own private use. For many years the people offered little or no complaint. But at the time of the Revolution of 1689 they declared that the legislators who passed the act had intended that the proprietor should, with the income from that duty, make secure the several ports and harbors, by erecting forts and providing them with ammunition. Accordingly, the first Assembly that sat under the royal government passed an act which changed the name of the duty from port duty to tonnage duty, and gave a part of it for the support of the council of state, and the remainder for purchasing arms and ammunition. But the proprietor laid his claim before the home government, and when the question came to the solicitor general for decision he decided that the act of the year 1661 gave the duty to the proprietor for his private use. The crown, therefore, disallowed the act and directed that the said duty should be paid to the proprietor.[1]

No further dispute arose about the matter until the

[1] Proceedings of the Council, 1687–88 to 1693, pp. 421, 422, 454.

year 1739, when a party appeared that seemed determined to make every possible charge against the proprietor and his government. The pretence of that party with respect to the tonnage duty was that by a repealing act of the year 1704 the law imposing it had been repealed.[1] It is true that the repealing act of 1704 did declare all laws that had ever been made in the province before that year to be repealed, save those mentioned in an excepting clause ; and in that clause was no mention of the tonnage act. But there was also in that repealing act this saving clause, viz, "Saving always to all and every person and persons whatever was his and their right and benefits which he or they had by the former acts of Assembly." Therefore, on the same basis as that of the solicitor general's decision in the year 1692, the proprietor was still entitled to his tonnage duty. Nevertheless, until the overthrow of the proprietary government the lower house continued to deny his right to it. In 1761, when the Board of Trade asked for copies of laws in force, that house would not agree to defray the expense of preparing them unless the editor would leave out, with one other act, the act for tonnage duty.[2] But the fair-minded Governor Sharpe and Daniel Dulany, Jr., with his distinguished legal talent, never gave a sign of doubting the proprietor's right to that duty.[3]

Although in matters of territorial revenue the more important trouble arose over questions involving the proprietor's right to it, yet, as might be expected, the collection of it gave rise to occasional difficulties. However, so little trouble arose out of the collection of that payable to the naval officers at the ports or that due as purchase

[1] L. H. J., June 5, 1739.

[2] Sharpe's Correspondence, Vol. II, p. 489.

[3] *Ibid.*, Vol. III, p. 304; Dulany Papers.

money for land, before the warrant was issued, that it is unnecessary to take notice of it; and as almost no ferry money was ever paid to the proprietor, the collection of quit-rents and alienation fines alone remains.

By the terms of the grants the rents were to be paid semi-annually at St. Mary's. As already stated the governor and the secretary, aided by the attorney general and the sheriffs, attended to the collection of them for many years after the founding of the colony. In 1671 each sheriff was instructed to prepare for his county a rent-roll in which were entered the names of all persons who possessed land within the county, the name and quantity of every parcel of land, and what quit-rent each tenant was annually to pay.[1] Six years later the county clerks were ordered under severe penalties for disobedience properly to report every alienation in order that the rent-rolls might be kept correct and the alienation fines be collected.[2]

In 1676 the duty of superintending the collecting was taken from the governor and the secretary by the appointment of two receivers and collectors of all the proprietor's revenue.[3] They were given power to appoint deputies, and required to direct the sheriffs and all other deputy collectors to give an account to them once a year. After his appointment in 1684, an officer, usually known as agent and receiver general, had the chief management in collecting the proprietary revenue. But in 1733 the governor was, to a limited extent, associated with him. Finally, in 1766, a building for the agent's office was completed, all officers under the agent were made more strictly and regularly accountable to him, and the whole

[1] Proceedings of the Council, 1667 to 1687–88, pp. 91, 92.
[2] *Ibid.*, 1671 to 1681, pp. 159, 160.
[3] *Ibid.*, pp. 119, 120.

business was subjected to what became known as the board of revenue.[1]

From 1733 on, immediately under the agent were two rent-roll keepers appointed by the governor — one for the eastern and one for the western shore. Under the rent-roll keeper, a farmer or receiver of the rents for each county was also chosen by the governor.[2]

The rent-roll keepers received five per cent of the net value of the rents. The rents were usually farmed, but in a few counties they were collected by receivers. In 1733 the farmer received twenty-five per cent while the receiver was paid ten per cent. In 1736 the farmer's rate was reduced to twenty per cent; in 1753 it was reduced to fifteen per cent; and two years later, when the sheriffs were appointed farmers, the per cent was reduced to ten. But in 1765, when the proprietor wished to have the farmers' rate reduced to six per cent, the governor informed him of the difficulties of collection, and stated that even at ten per cent the sheriff regarded it as a burden of his office.[3] The next year the board of revenue, not satisfied with the way in which the sheriffs farmed, decided to take the work out of their hands and include two of the small counties in one farm.[4]

Before the Revolution of 1689, either the proprietor was himself present in the province, or was nearly always represented by an able and faithful brother or son, and no serious trouble arose with respect to collecting the revenue. But during the period of royal government much difficulty from that source was encountered, although the proprietor was given some relief by the crown and by his faithful agents. With the restoration of the proprietary

[1] Calvert Papers, No. 652; Sharpe's Correspondence, Vol. III, p. 375.
[2] C. R., June 18, 1733.
[3] Sharpe's Correspondence, Vol. III, p. 213 *et seq.* [4] *Ibid.*, p. 375.

government little difficulty was to be expected so long as proprietor and people agreed upon an equivalent. But after the termination of that agreement several cases of alleged extortion were, in 1737, investigated by the lower house, and the chief charge found to be the undervaluing of foreign coins that were given in payment for the rents.[1] Those found guilty, after being condemned at the bar of the house, the governor was asked to prosecute. But there was doubtless a feeling on the part of the people at that time that a great amount of difficulty in collecting the rents would cause the proprietor to agree to an equivalent more in the people's favor. However, this and two other investigations of a similar nature indicate that the collectors of the rents were much restrained from imposing hardships on the people through fear of being called to account by the lower house, of being obliged to pay fees to officers engaged in any investigation of their conduct, and of incurring the danger of a regular prosecution by the government.[2]

In the struggle between proprietor and people with respect to territorial revenue, it is therefore clear that the proprietor was in a very large measure successful in preserving his rights and in receiving his dues. With the exception of the period of royal government, nearly all controversies as to right, and the chief complaints against farmers and receivers, arose after 1735; and as a result of all controversies and complaints the proprietor was not only not obliged to give up any large source of revenue, but the rate paid for collecting it was reduced one-half.

Before the end of the proprietary government came, the net annual amount of the territorial revenue probably exceeded £12,000 sterling. The strength to the govern-

[1] L. H. J., May 4 to May 21, 1737. [2] C. R., June 7, 1748.

ment available from so large an income might, in the hands of an administrator like the first Lord Baltimore, have been equal to all the opposition which arose out of the proprietor's territorial relations; but in the hands of the degenerate Frederick, who was more interested in the revenue than in the government, such was not the case.

CHAPTER III

THE ACTIVITY OF THE LEGISLATIVE ASSEMBLY IN TERRITORIAL AFFAIRS

In the mediæval fief the legislative Assembly existed only in germ; for the most part it merely assented to what the lord of the fief proposed. Its full development meant equality of rights and privileges in the eye of the law; the rise of the Assembly, therefore, meant the fall of the feudal system. Consequently, special attention to the part which the Maryland legislative Assembly played with respect to territorial affairs may be expected to show, from another aspect, the decline of the lord proprietor's power.

Until after the Maryland Assembly had sat for the second time, the lord proprietor insisted that he alone had the right to initiate legislation. Had the freemen acknowledged that right to be vested solely in him, it is highly probable that the sale of manors would have been forbidden by law. It is equally probable that the laws of the province would have required that on every manor there should be at least twenty freemen, that fifteen of them should be trained as soldiers and kept ready for the service of the country, and that the lord of the manor should maintain them in time of such service.[1] But in-

[1] Calvert Papers, No. 1, pp. 159, 164.

stead of succeeding in thus providing the land system with the military features of a fief, the bills containing those requirements failed to become laws, and in August, 1638, the lord proprietor conceded to the Assembly the right of initiating legislation.[1] So, at the very outset, while the strong prop to feudalism failed even to be set up, the principal obstruction to the growth of the Assembly's power was removed.

From the year 1638 until the Revolution of 1689, the lord proprietor's control over the legislative Assembly was still sufficiently strong to procure some legislation in support of his territorial jurisdiction. Yet such legislation during that entire period consisted in little more than in declaring that title to land could not be acquired by purchase from the Indians, in determining how soon after the issue of the warrant of survey, rent should begin, and in determining how long land might be left deserted — with the rent unpaid — before it escheated to the proprietor. During the same period, legislation in favor of the people provided that quit-rents and alienation fines might be paid in tobacco,— for that provision, however, the proprietor was paid, — and it determined the fees of the surveyor general. An attempt of the lower house to procure a law for the regulation of surveying was unsuccessful.[2]

During the period of royal government the proprietor was without control over legislation, except in so far as he was able to interest the crown in protecting his rights. Under such conditions the amount of legislation with respect to territorial affairs was not large, but it was far-reaching in its tendency, and all against the proprietor.

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, p. 31.

[2] *Ibid.*, 1666 to 1676, pp. 23, 39, 85.

It aimed at control of the terms on which land should be granted, at making surveyors accountable to the people, and at making regulations for surveying. But the crown gave the people no encouragement in such legislation; and with the exception of an unsatisfactory law for determining the bounds of estates, little had resulted from that legislation when the proprietary government was restored.

Immediately after the restoration, sufficient harmony existed between proprietor and people to enable them to agree upon a full equivalent for the proprietor's quit-rents and alienation fines. For five years the proprietor permitted the law determining the bounds of estates to continue in force. The former of these laws, as already stated, was beneficial to both proprietor and people. The latter was both detrimental to the people's interests and encroached on the proprietor's jurisdiction. It provided that the settlement of controversies over the bounds between estates should be taken from the courts and intrusted to commissions appointed by the governor and council for each county. At one time an appeal lay from one commission to another; but when it was found that upon appeal the first decision was usually reversed, the law was so changed as to dispense with the second commission for hearing appeals. It was a law under which a man's real estate was too frequently at the disposal of ignorant and interested judges. Could the lower house have had its own way, the law would have been made still more injurious by providing that the commissioners should be elected annually by the people of the county.[1] The arbitrary procedure of the commissioners, who were subject to no control or regulation, had the effect, it was claimed, of setting aside the proprietor's

[1] U. H. J., May 6, 1718; October 17 and 25, 1720.

rules for the regulation of surveying and determining boundaries, and, consequently, robbed him of his right to surplus land. It also increased the difficulty of keeping up the rent-rolls.[1] After the judge of the land office had presented to the proprietor the several objections to the law, he disallowed it, in 1720, on the ground that it was repugnant to the laws of Great Britain for determining right to property.[2] Thirteen years later the law that gave the equivalent for quit-rents and alienation fines was suffered to expire.

After the expiration of the last mentioned law, disaffection between landlord and tenants increased. Attempts to agree upon another equivalent for the rents and fines were unsuccessful. The farmers and collectors of rents were charged with extortion. The question, how to settle disputed boundaries, continued to be a troublesome one. Besides the bills for giving another equivalent for the rents and fines, a bill for perpetuating the bounds of land was several times considered by the lower house. In the year 1750, that house ordered such a bill to be printed in the *Maryland Gazette*. It proposed that each parish should be divided by its vestry into precincts, that at least two freeholders should be appointed for each precinct, that those freeholders should go round, or procession, every man's land, within their precinct, once every four years for the purpose of preserving the landmarks, and that after a man's land had been processioned four times the boundary thereof should not be altered.[3] However, the bill never became a law, and as years passed the need of such a measure disappeared.

The question of an equivalent and that of boundaries between estates had not been long dropped, when the

[1] Calvert Papers, No. 2, pp. 1–25. [2] U. H. J., July 19, 1721.
[3] *Maryland Gazette*, July 25, 1750.

L. of C.

alarm created by General Braddock's defeat caused Governor Sharpe to disregard the lord proprietor's instructions and to give his assent to an act of assembly for his Majesty's service which imposed a tax of one shilling per hundred acres on all the proprietor's manors and the leased portions of his reserved lands. The tax was imposed for seven years, and was estimated to amount to £80 sterling per annum.

Only two years later, when further supplies were asked for carrying on the war, the lower house — doubtless under the influence of the Pennsylvania assembly — attempted to impose a tax on the proprietor's quit-rents. In a message to the upper house on that subject, they said: "There is nothing to us more reasonable than the tax on that part of the Proprietor's revenue which arises from his quit-rents, and it is by no means less just because it has not been before attempted in this Province or established in any other Colony. If it is just and right in itself, it ought to be done, whether the governor is at large or is restricted. But we shall never presume that our Lord Proprietor would give any instruction for preventing a tax on his estate here so as to obstruct grants for his Majesty's service and the security of his own estate as well as ours; but on the contrary would on all occasions freely contribute equally with his tenants toward the protection of his own and their property, and to the support of the common cause against his Majesty's enemies. . . . As it is not expressed in our grants that we should undertake the burthen of defending ourselves, we cannot see how it can arise from the nature of them or be a consideration in them."[1] When the lord proprietor, the governor, and the upper house all continued firm against the persistent and repeated attempts to tax

[1] L. H. J., April 27, 1758.

those rents, the lower house did its best to represent the proprietary government in an unfavorable light.[1]

In addition to actual legislation, the lower house found that by passing resolutions or by mere concurrence in the reports of its committee on grievances it could win popular favor, and thus influence the decisions of the courts, or so alarm the proprietor as to cause him to yield. For example, in the year 1739, in response to the proprietor's proclamation with respect to vacating grants containing surplus land and encouraging the discovery of such grants, the lower house, with but one dissenting vote, claimed to conceive that such a course of the proprietor might "prove of the highest and most pernicious consequence to the quiet, peace, and safety" of the province by "encouraging informers, raising and propagating litigious and expensive lawsuits, dispossessing families of their long-continued tenures, and by invading property of the highest nature." Furthermore, the house held that if a stop were not put to such proceedings, they might in time "tend to the utter subversion of the landed estate of the good people of the province for which they and their predecessors had honestly paid a full consideration to his Lordship and his ancestors, and for the enjoyment of which in quiet and security they left their native country, risked their lives amongst a heathen, savage, merciless people, the inclemencies of the seas, and intemperature of climate."[2]

Such reports and resolutions frequently had more effect than the proprietor's proclamations and instructions against which they were usually directed; and, as it was through proclamations and instructions that the proprietor exercised his jurisdiction, the fact that those resolutions had so much

[1] Portfolio 13, Nos. 23, 24.
[2] L. H. J., May 31, 1739.

force is significant. It was after such expression of feeling in the lower house that the proprietor found it impossible to secure much from his claims to surplus lands, to alienation fines on lands devised, or to ferry licenses. It has already been seen how that house contended that the terms for granting land should be published, and that the proprietor had no right to determine the fees paid for services performed in the land office.

If, therefore, the actual legislation in territorial affairs continued small, it nevertheless appears that there had been awakened among the people a longing for nearly all those rights pertaining to land that are exercised by a legislature of the present day; and what was in time to be the outcome, is indicated by what was thought and attempted in regard to escheat.

In 1760 it was reported that crowds of people from all parts of the province gathered around the provincial court during its trial of a case in which the whole question of escheat was at stake; and when the incompetent and frightened justices seemed strongly disposed to yield to popular clamor, that proprietary right was rescued only with great effort by the attorney general.[1] Nine years later Ex-Governor Sharpe advised that legislative action be attempted in order to prevent a complete loss of that right. He stated that there was a growing feeling that, whenever it could be shown that land had been once regularly granted by the proprietor, it ought never to escheat to him, though it were impossible satisfactorily to trace the title back to the original grant; and an act of parliament against latent claims of the crown seemed to favor the people. He therefore proposed that, instead of insisting that the title in all cases should be traced back to the original grant, a compromise should be made

[1] Portfolio 4, No. 53.

with the lower house by which it should be required only where the grant had been made within a certain fixed number of years; and that a law on the basis of the compromise be then passed.[1] It is not improbable that such a compromise, as well as other similar ones, was prevented only by the many controversies and the final overthrow of the proprietary government that so soon followed.

[1] Proprietary Papers.

CHAPTER IV

THE INDUSTRIAL DEVELOPMENT

In the life of the average Maryland colonist, the paramount motive force was decidedly economic or industrial in nature. The religious spirit was weak; the moral standard was not high. For the first one hundred years and more, not only was the training of the intellect grievously neglected, but life was further narrowed by insufficient social intercourse and by the confinement of activity, in great measure, to the ceaseless labor required for the cultivation of tobacco on the sands of southern Maryland.

It was this very narrow view of life that caused those people to prize all the more highly their rights as tenants. It was with the same view, and in the same spirit, that their representatives sought in the legislative Assembly to protect and to promote their economic interests in general. Moreover, the location of the estates, the great number of small estates as against a far less number of large ones, and the fact that the government officers were paid for their services in tobacco, the staple commodity, added much to the zealous obstinacy with which industrial questions — principally those relating to the tobacco industry — were fought over by the two houses of Assembly, the one house standing up for the proprietor, the officers, and the large landholders, the other house supporting the interests of the great body of small land-

holders. So long was the disagreement continued that a successful regulation of the industry had not yet been made when the larger development — which made possible a vigorous political life and increased the industrial independence of the province — had begun to make rapid progress. Side by side, therefore, with the controversies relating to the proprietor's territorial rights, the industrial development, or questions relating thereto, had much to do in determining the development of the government.

Exclusive of those reserved for the proprietor, about one-half of all the Maryland manors lay near the mouth of the Patuxent or the Potomac, and not far from St. Mary's, the early seat of government. Of the other half, a large part were on the eastern side of the bay along the banks of the Choptank, the Elk, or the Chester. Likewise, for the first one hundred years, most of the simple freeholds lay along the shore of the bay or fronted some river bank.

The usual size of the manor was from 1000 to 2000 acres, although a few of them contained 5000 or more; and while simple freeholds of 1000 acres or more were not rare, yet those containing less than 400 were by far the most numerous. Thus of 1119 simple freehold grants made before the year 1663, there were 60 of 1000 acres or more, 241 of 500 or more, 778 of less than 400, and 389 of less than 200. It is also to be especially noted in this connection that each of a comparatively numerous body of servants received, at the expiration of his term of service, an estate of only 50 acres. Moreover, since previous to 1683 grants were made in consideration of the transportation of persons into the province, the size of the estates indicates, in some measure, the amount of labor that was available on each.

So well adapted to the raising of tobacco was the soil of most of these estates, that attempts to encourage the raising of other products proved largely futile. So the quantity of tobacco grew with the increase of population; while the ease with which those escaped detection who mixed worthless with good tobacco lowered the quality and created for the Maryland product a bad reputation. Furthermore, the several European wars at times endangered the carrying trade and decreased the demand. As a consequence, the price of tobacco fell from three pence per pound in 1649 till the product became a drug on the market in 1666; and because of the obstacles in the way of a proper regulation the price seldom rose above a penny per pound until after 1747, when those obstacles were at last overcome.

The obstacles referred to arose from the fact that when the supply exceeded the demand, or when the means of transportation was insufficient, the large planter had a decided advantage over the small planter. For since on so many of the estates there was a place at which vessels could be loaded, the province remained without any central market within its borders. Under such conditions the tobacco merchants found it more convenient to load their ships at the large plantation ports. Or, if the difficulty arose from insufficient means of transportation, the large planter was the better able to provide himself with the same from England. Also, when it seemed clear that the welfare of all demanded that the production of the commodity should be limited, the large planter was the better able to deny himself in whatever way was thought necessary to accomplish the desired end. Such conditions naturally encouraged jealousy on the part of the small toward the large planters.

But this was not all. The principal officers of the

province were chosen by the lord proprietor from the holders of the largest estates. Those same officers constituted the council of state and the upper house of the legislative Assembly; and they were paid for their official services in tobacco. From 1671 to 1715 the proprietor was paid his quit-rents and alienation fines in the same commodity. Likewise, a perpetual act of 1702 required that the clergy should be paid forty pounds of tobacco per poll. Hence, any movement for the purpose of keeping up the price of tobacco affected the support of the government.

It is true that the members of the lower house were themselves quite large planters, that they were paid in tobacco for their service in Assembly, and, also, that most of them were paid in the same commodity for service as justices of the county court; yet they could not with impunity disregard the wishes of that numerous constituency of small planters.

By the year 1662 the problem, the solution of which the above circumstances were to make so difficult, had arisen not only in Maryland, but also in Virginia. In the following year commissioners from the two provinces met in response to instructions from the crown, in order to consider propositions for limiting the production of tobacco. At that meeting it was agreed to submit to the government of each province a proposal to prohibit the planting of tobacco after the twentieth of June.[1] But that proposal was rejected in Maryland because it was feared that an agreement on such terms would be more favorable to the southern province.

The first attempt having thus ended in failure, the governor and council of Virginia urged the executive of

[1] Proceedings of the Council, 1636 to 1667, pp. 476, 477, 479, 480, 503–510.

Maryland to give its support to a bill for a complete cessation, for one whole year, from planting tobacco in Maryland, Virginia, and Carolina. By appearing in person before that executive, the governor and council of Virginia obtained the promise of what had been refused when asked for through a written message; and in the year 1667 the governor and the upper house of Maryland gave their strongest support to the bill providing for a cessation during that year. After the lower house had stated that it believed such a cessation would cause the province to be much depopulated and had refused to pass the bill, the governor requested a conference between the two houses. Although the conference was avoided by the lower house, on the ground that it would interfere with its freedom of debate, the several objections to the bill were sent to the upper house; and after they had been answered the bill passed.[1]

But its passage caused such a clamor among the small planters that the speaker and several other members of the Assembly saw fit to petition the lord proprietor to disallow the act. The prayer of that petition was granted, and when the Virginians made complaint against the lord proprietor, he gave the crown the following reasons for his disallowance of the said act: (1) that while the act was favorable to the ablest planters, "it tied up poor men's hands from working out their necessary livelihood; (2) that it would tend to compel the poor planter to enter into new servitudes to the more rich to gain subsistence; (3) that it would endanger the peace of the province by provoking people to sedition.[2] Thus ended in failure the first vigorous attempt to in-

[1] Proceedings and Acts of the General Assembly, 1666 to 1676, pp. 66, 109–113.

[2] Proceedings of the Council, 1667 to 1687–88, pp. 5–9, 15–20.

crease the price of tobacco by a law for decreasing the supply. Another such attempt was not made until more than half a century later.

The method of raising the price by improving the quality remained to be tried. Yet to accomplish that it was necessary to pass a law against concealing the bad among the good. And to enforce such a law it was necessary that the vast number of places of shipment should be reduced to a few ports duly appointed and constituted as such by a recognized authority; and that an efficient inspection service should be provided at each of those ports.

With the exception of an insufficient law, first passed in the year 1657, against mixing the ground, or bottom, leaves with good leaves, and against making second crop tobacco, no action was taken by any part of the government to preserve the quality of the product until after the failure of the act for the cessation from planting. But very soon after vetoing that act, the lord proprietor, in accordance with a right expressly conferred on him by the charter, instructed the governor to make, erect, constitute, and appoint ports. In response to that instruction, the governor, in the year 1668, issued a proclamation which limited the number of places of shipment to thirteen, nearly all of which were on some large estate. For shipping from any place other than one of the thirteen, the offender was to suffer the penalty of one year's imprisonment.[1] A similar proclamation was issued in 1669 and in 1671. But it is clear that those proclamations did not well serve their purpose; and in the year 1682 there was passed in the upper house a bill appointing places for ports. The bill was lost that year. But the next year after the lower house had declined to pass it, that

[1] Proceedings of the Council, 1667 to 1687–88, pp. 31, 32.

body was called into the upper house and there so severely reprimanded by the lord proprietor, Charles Calvert, that the bill was passed the same day.[1] Yet, although that bill became a law and appointed thirty places as ports, it was of no lasting force. Besides, there was still wanting a good law against deceitful packing. The first year that the port bill was introduced an attempt was made to supply that want; and the upper house passed a bill, one clause of which read as follows: "That no planter presume to false pack any tobacco by putting therein any frost-bitten, ground leaves, or seconds, or worse tobacco in the middle, about or in any part of the hogshead than is at the head in open view, under a penalty of having every hogshead of tobacco so false packed as aforesaid burnt by the sheriff or other public officer, and the delinquent also to forfeit one thousand pounds of tobacco for every such default, one-half to go to the Right Honorable the Lord Proprietary, the other half to the informer who should sue for the same."[2] For more than two weeks the lower house debated the provisions of this clause, but could come to no agreement. Consequently the tobacco industry was suffered to languish from want of regulation.

During the period of royal government not only was no progress made toward regulating that industry, but the poverty and distress of the planters were increased by the European wars which caused the closing of markets and the loss of tobacco at sea. Only a few years after the restoration of the proprietary government the declining condition of the tobacco trade created serious commotion. For it appeared that while Virginia had regulated

[1] Proceedings and Acts of the General Assembly, 1678 to 1683, pp. 488, 492.

[2] *Ibid.*, pp. 261, 268, 288, 367.

the trade so as to advance the price, the quality of the Maryland tobacco remained unimproved. An act of assembly passed in the year 1721 against trash and for limiting the time of shipping could not have had much effect; for in the year 1730 the governor said, "Trash is the greatest cancer to our staple."[1] There was such delay in preparing it for market that it lost much of its scent, freshness, and weight. Then, too, the common means of transporting the crop from the place of growth to the port of shipment was by the slow and laborious rolling of hogsheads. Justly, therefore, the merchants complained of the slavery imposed on their sailors by being "obliged to roll it from far to the water side." Further, in the year 1726, the governor, while speaking of the complaints of the merchants, said: "They observe that their ships lie here subject for many months to the injury of the worm, their sailors undergo such fatigue from the excess of heat and labor, that if not lessened in number they are at least abated in their ability to work the ships home, and that their ships arrive on the English coast in a stormy and dangerous season. If these inconveniences attend them in their shipping, they of course entail others on us. Leaky ships and bad weather must damage our tobacco, want of able hands endanger the loss of it; and although it arrives in safety, yet it comes to a late market, which is generally a bad one."[2]

But although the tobacco industry remained in such a languishing condition, the situation, in one respect, had changed from what it had been before the Revolution of 1689. The upper, and not the lower, house was now on the defensive. The small planters and the lower house had become eager for laws designed to raise the price of tobacco. In 1726 the governor received petitions from

[1] L. H. J., May 21, 1730. [2] *Ibid.*, October 10, 1726.

various parts of the province complaining of the low state to which the tobacco culture was reduced, and desiring that the Assembly might be convened to consider some method of relief. In 1728 it was proposed in a seditious paper, posted up in Prince George's County, that those in favor of a tobacco law should arm themselves and drive the Assembly into the making of the desired law.[1] In 1730 the lower house held that a tobacco act was absolutely necessary to save the country from ruin.[2] And in 1732 despair of the Assembly's passing the desired law induced a band of desperate characters to cut up tobacco.

The great obstacle to the needed legislation lay in the fact that the lower house was scarcely less eager to reduce the fees of officers and the dues of the clergy than it was to save the tobacco industry. It held that any law which was designed to raise the price of tobacco should, in fairness to all, diminish the quantity to be paid to the officers and the clergy. In 1719 the lower house succeeded in having the fees of officers reduced about one-fourth; but an attempt, which was made five years later, to reduce them one-half was a failure. Fees then continued without any accepted regulation from 1725 to 1733, when the lord proprietor's proclamation fixed them at the rates which had been prescribed by the law of 1719. The question of officers' fees thus became a hindrance to the passage of a good tobacco law; for so long as officers' fees were not subject to regulation by the Assembly, the value of those fees was almost sure to be increased by any law that advanced the price of tobacco.

With respect to the dues of the clergy the case was at this time quite different. The loose morals of many of that profession had roused hostility and caused

[1] L. H. J., October 26, 1728. [2] *Ibid.*, May 25, 1730.

general dissatisfaction with the perpetual law of 1702, which gave to the clergy forty pounds of tobacco per poll. Hence, the desire to defeat that law was doubtless a strong incentive for passing an act of assembly, in the year 1726, which would limit the number of tobacco plants and at the same time reduce the nominal dues of the clergy one-fourth. The pretence was made that the real value of those dues would not be diminished in consequence of such a law. But it was doubtless a just complaint of the clergy that their dues were usually paid with the poorest tobacco, and that this act was no remedy for that evil. Consequently, it became necessary for the lord proprietor to veto the act in order to prevent the clergy from laying the matter before the crown.[1]

After that dissent, the situation had become such that for the lower house to pass a law designed to raise the price of tobacco would have been too much like a victory for the lord proprietor, his officers, and the clergy. It was not to be expected that anything but the greatest distress would make the great majority of the people and the lower house submit to undergo any restraint that promised less advantage to them than to the lord proprietor, the officers, and the clergy, especially as this was a time of general antagonism to the government. That distress, however, had become alarming in 1730 ; and in response to the many loud clamors for a tobacco law, an act was passed that year which was similar to that of 1726, except that it provided for the payment in grain of one-fourth of the clergy's dues. But although the governor urged its continuance, that act was suffered to expire at the end of one year. In 1732 a bill for preventing the exportation of trashy and unmerchantable tobacco failed to pass the lower house by a vote of twenty-one to twenty-six. Four years later a similar

[1] Perry, Papers relating to the Church in Maryland, pp. 262–283.

bill failed. So the province continued without any effective tobacco legislation. In addition to the friction between the different branches of the legislature, the few laws that had been made were so imperfect and so inadequate that their results gave no encouragement for further legislation. Those laws had been too much directed toward limiting the quantity and not enough toward improving the quality.

But while Maryland was despairing of relief from any legislation, Virginia kept improving her tobacco laws, the final outcome of which was not only to furnish Maryland with an example, but also to bring that crisis upon her which is so clearly presented in a letter to the proprietor written by Daniel Dulany in 1743, and also, a little later, in an address to the proprietor which Dulany prepared for the governor and council. In that address it was stated that Maryland tobacco had lost its reputation to such a degree that merchants were ordering their agents, settled in Maryland, to remove to Virginia. "To which place," the representation continued, "we expect all or most of the tobacco buyers will soon resort; because that although they give a much greater price there than they could buy here for, yet they are sure of purchasing better tobacco there than here. Great numbers of the inhabitants have been used to purchasing clothing and other necessaries of which they will soon become destitute.

"By the advice from home, the French who usually purchased great quantities of our leaf tobacco, decline buying any of it, so long as they can be provided with Virginia tobacco. . . . We have but too much reason to apprehend that unless our staple is speedily put under some effectual regulation, the Virginians will get the whole trade into their hands, wherein they have already made a considerable progress.

"If the difference we have mentioned arose from any difference of soil or climate, it would, perhaps, be in vain to attempt any regulation, or to hope that any that could be made would prove effectual; but that is so far from being the case that we have really the advantage both in soil and climate, and the remedy of all the difficulties under which we labor is within our reach.

"Our unhappy situation arises from this, that our people are under no kind of restraint, and the generality of them are unwilling to be under any which may have the least appearance of lessening the quantity of tobacco they make; under which general denomination all manner of trash, though unfit for anything but manure, is included, and so intermixed with what is really merchantable as to render the whole of little value; and in many instances has been so far from clearing the proprietors anything near what it cost them, that it has brought them in debt, and given Maryland tobacco in general a very bad character at all the European markets."

The representation next accounted for the failure of all past attempts to remedy the evil, and then concluded: —

"Sometimes a short crop occasioned by the unseasonableness of the weather, or other accidents, has occasioned the rise of tobacco, which occasioned too many to think that not only a providential but the only remedy that could be reasonably hoped or expected; which notion, however wild and extravagant, has contributed a good deal to fix an aversion in the generality of the common people, and, indeed, in too many of the representatives to any regulation at all. But now that the difficulties under which the country labors are increased, and that every individual person is sensible of them, and that those that have given themselves the trouble of inquiring into the success of the Virginia law are convinced of the necessity of some such

regulation here, and that without it the country is in apparent danger of being absolutely ruined, it is to be hoped that they would act so reasonably and be so much their own friends to use all means in their power to avert the calamities with which the country is threatened.

"To the making an effectual regulation to this purpose, there is one great obstacle, and that is the specific payments in tobacco which by the present laws the people are obliged to make to the clergy, officers, and lawyers. . . . The only expedient we can think of, or believe practicable, is the retrenching the tobacco payments, into which we believe that even the clergy themselves would voluntarily come, notwithstanding the establishment in their favor; and should the officers or practitioners of the law be less forward to contribute to the public good, it would render them odious to all mankind, and occasion the calamities of the country to be imputed to them, nor would the odium stop here. As to such of ourselves as are entitled by the offices we hold, or our profession, to the tobacco fees, we beg leave to assure your Lordship that we would most readily and cheerfully sacrifice part of our own income to the welfare of the country; but in the present case we believe that we would be gainers if a proper regulation was to take place, as the value of what we should then receive would (in all probability) exceed what we can now hope for."[1]

Nothing less, then, than extreme danger of the country's ruin was required to break down the obstacles to the long-needed tobacco legislation. Even then, some of the planters of the poorer sort opposed the passing of a law like that of Virginia, on the ground that the expense of executing it would make the taxes heavier than they could bear.[2] But early in the year 1747 some freemen of Talbot

[1] C. R., February 1, 1743. [2] *Maryland Gazette*, April 1, 1746; April 28, 1747.

County pointed out to their delegates the extreme necessity of improving the quality of Maryland tobacco and recommended the Virginia inspection act. At the same time, also, the need of such an act was much discussed in the columns of the *Maryland Gazette*. The arguments of those who were in favor of an inspection act were decidedly the stronger. The result was that in the session of assembly of that year greater harmony prevailed than had been known for years; the officers, the lawyers, and the clergy agreed to the reduction of their fees; the inspection act, modelled after that of Virginia, was passed with but little difficulty; and at the breaking up of the session so intense was the general good feeling that the members of both houses drank twice to the success of the tobacco trade, the town guns were fired ten or eleven rounds, and the populace, having punch and wine distributed among them, made loud acclamations of joy.[1]

The act was entitled, an act for amending the staple of tobacco, for preventing frauds in his Majesty's customs, and for the limitation of officers' fees. It provided for a warehouse, scales, and a wharf at each of eighty appointed places; and no tobacco was to be exported before it had passed a carefully provided inspection at one of those warehouses.

The disadvantage of having so many shipping places was still felt by some as a heavy burden. It was charged that the cost of eighty warehouses, eighty scales, and eighty wharves was £6400, and that the annual expense of the entire inspection service was £5780; whereas it was estimated, that if the eighty had been reduced to two, —one on each shore,— the annual expense would have been reduced to £966.[2] Yet the price of tobacco per hundred pounds soon advanced from eight shillings and

[1] *Maryland Gazette*, July 14, 1747. [2] *Ibid.*, July 12, 1753.

less to twelve shillings. While no limitation was imposed as to quantity, the amount required to pay the fees of the officers, the lawyers, and the clergy was reduced twenty per cent. Moreover, the inspection encouraged the spirit of emulation among the planters, inducing them to offer prizes for tobacco of the best quality. Weight, substance, scent, size of the leaf, and neatness of packing were the elements considered by the judges who awarded the prize. One of the results was that, while the ordinary net weight of a hogshead had been less than 1000 pounds, in the year 1752 the net weight of a hogshead belonging to a man in Queen Anne's County was 1829 pounds; and those who witnessed the inspection of it agreed that they never saw tobacco in better order.[1]

After the law had been in force three years, the lower house acknowledged the advantages derived from it, and expressed the hope that by amending and continuing it Maryland might become the home of a prosperous and flourishing people. With but little change, the act was continued and cherished as the most precious law of the province until 1770, when its loss, owing to another controversy over officers' fees and dues to the clergy, gave rise to the violence that followed; and some measure of quiet was restored only after the revival of that act in 1773, with the omission of all provisions relating to officers' fees and dues to the clergy.

But a well-regulated tobacco industry was insufficient to bring Maryland to her fullest and completest development, either industrially or politically. All the land that was adapted to the raising of tobacco lay near the bay. The raising of nothing but tobacco soon exhausted the fertility of the soil. It was a long time before all the tobacco land was taken up. Consequently, since land

[1] *Maryland Gazette*, August 20, 1752.

was cheap, and new land produced a larger quantity and a superior quality of tobacco, the old was often abandoned to the weeds.[1] Instead of developing the resources of a country, such a process was destined rather to foster a careless and slovenly spirit, which even to-day hovers over the rural districts of southern Maryland. Again, the labor which the raising of tobacco required was exhausting, and created a demand for the African slave.

Furthermore, excess of attention to tobacco culture prevented the province from becoming self-sustaining, and hence, also, industrially independent. For the tobacco planter took little of the produce of his land to the towns within the province to exchange for articles of food and clothing of Maryland production and manufacture. But, for a long time, to the planter's own port the English merchant sent his goods to be exchanged for tobacco. There was, therefore, little need for towns. Under such conditions it is not strange that the people of Maryland continued so long to speak of England as their "home"; for while raising little except tobacco, they scarcely made a home of their own within the province.

The bay was for them a convenient highway for transportation and social intercourse. Consequently the making of roads was so largely neglected, that in several of the older counties a beginning has hardly yet been made. Notice has already been taken of the inconveniences resulting from the disagreement with respect to the regulation of ferries.

In the bay was a great abundance and a considerable variety of both sea food and water fowl. Although there were large numbers of horses, cattle, and swine within the province, yet, after having been branded as far as possible by their owners, the most of them were allowed to roam

[1] Sharpe's Correspondence, Vol. I, p. 38.

half wild in the backwoods with the numerous deer and wild turkey. Of sheep there were few, because it was too troublesome to protect them from the wolves.

Nature was too lavish with her gifts to the tobacco planters. She gave them too many ports, too much meat; and as a consequence their environment became enervating rather than an incentive to progress. But with the remarkable variety of her soil and climate, and the richness of her mineral resources, there was no reason, from the industrial standpoint, why Maryland might not become a self-constituted whole. The development necessary to bring about such a condition was a long time beginning.

As early as 1639 Secretary Lewger wrote to the proprietor about the progress that was being made toward providing the province, and more especially the proprietary manors, with cattle, swine, sheep, and poultry.[1] In 1663 Governor Charles Calvert wrote to the same proprietor, his father, the following: "As for setting up a farm of English grain, I have this year made a good step toward it, by sowing fifteen or sixteen bushels of wheat and ten or twelve bushels of oats, seven bushels of peas, eight or nine bushels of barley. And if the year prove seasonable, I doubt not but to have three hundred bushels of wheat increase. For last year in a spot of ground of two acres and a half I had above forty bushels of wheat, twelve bushels of oats, and eight or nine bushels of peas. And the straw of that preserved my young cattle in the hard weather, and kept me four horses constantly in the stable in very good heart, when other horses were hardly able to do any service. The flax and hemp which your Lordship sent me was sown and begins now to come up, for which I return your Lordship my humble thanks."[2]

During much of the seventeenth century there was an

[1] Calvert Papers, No. 1, p. 196. [2] *Ibid.*, p. 246.

act of assembly requiring every tobacco planter to tend two acres of corn. From 1662 to 1666 an act of assembly, for encouraging the sowing of wheat, oats, rye, barley, and peas, fixed the price per bushel at which each should pass in payment of rent, and other dues. During most of the time from 1671 to 1776 there was in force an act of assembly which gave a bounty for raising hemp and flax or else fixed the price at which each should pass in payment of debts. In 1682 the legislature began a long-continued practice of offering premiums on the best manufactured pieces of linen. By act of that body, passed in the year 1765, each county court was to pay out yearly eight thousand pounds of tobacco in such prize money. For a short time, also, similar premiums were offered for the encouragement of woollen manufactures. In 1719 workers in iron began to receive some aid from legislative enactments. Finally, the act of assembly, by which the quit-rents and alienation fines were paid from 1717 to 1733, removed, during those years, the burden of rent from the non-tobacco-producing lands, and placed it all on the tobacco industry.

In 1715 Governor Hart, in a speech to both houses of Assembly, said: "The inhabitants of this province with a commendable industry use their best endeavors to cultivate tobacco, but there still remain many spacious tracts of this fertile soil (especially on the eastern shore) which are not so agreeable to the nature of that passable plant, but exceedingly well adapted to the making of hemp. What of this kind has been hitherto only raised for a home consumption in the opinion of mariners equals the best that grows in Europe. An improvement of this manufacture is worthy your consideration."[1]

The great impetus to the development of the province was, however, to be given neither by legislative enact-

[1] L. H. J., April 26, 1715.

ments nor by the making of hemp on the eastern shore, but through the opening, chiefly by the industrious Palatines, of the resources of the rich wheat lands, and the iron mines of the middle west, in what became Frederick County. As early as 1710 some Palatines came into the province and settled in that county. The legislative Assembly encouraged that movement by exempting them for the time being from the payment of all public levies.[1] At about the same time a considerable number of the same nationality settled in Pennsylvania and Virginia. As a consequence of the intercourse between them, the land of Frederick County, Maryland, had, by the year 1729, begun to attract the attention of large numbers.[2] Then, partly in the interest of his boundary dispute with the Penns, Charles Calvert gave the Palatines strong inducements to settle in his province; that is, he offered two hundred acres of back lands to every family, and one hundred acres to every single person between the ages of fifteen and thirty, who should settle thereon, requiring the payment not only of no purchase money whatever, but also of no quit-rent during the first three years after settlement. After the end of the three years they were to be charged an annual quit-rent of only four shillings sterling for every hundred acres.[3] In 1735 Daniel Dulany offered sufficiently favorable terms to induce about one hundred families recently arrived from the Palatinate to settle on some of his land in the same county. In 1749 the proprietor informed the governor that a number of Palatines were soon to arrive, and instructed him to give them grants of land as far back as possible upon any terms he saw fit.[4]

[1] L. H. J., October 27, 1710.

[2] Schultz, "First Settlements of Germans in Maryland."

[3] C. R., March 2, 1732.

[4] Portfolio 3, No. 14.

But the governor had already offered the same terms as those of the year 1732, except that purchase money of five pounds sterling per hundred acres was to be paid five years from date of settlement.

Such favorable terms, and the productive soil, had the effect of drawing increasing numbers of people into those parts. In 1774 Frederick County had a population of nearly fifty thousand, or but little less than one-seventh of that of the whole province.

The first results of the movement are indicated in a letter written in 1745 by Daniel Dulany to Samuel Ogle, in which the writer said, "You would be surprised to see how much the country is improved beyond the Mountains, especially by the Germans, who are the best people that can be to settle a wilderness; and the fertility of the soil makes them ample amends for their industry."[1] Where the forests had been, there appeared the wheat fields. The influence of wheat raising in that county grew, and spread even to the eastern shore. In 1770 the Bordley wheat field of three hundred acres on Wye Island was an object of delight to the wealthy men of the province. Moreover, in the year 1751 sixty wagon-loads of flaxseed came from the back settlements to the town of Baltimore within the space of only two days.[2]

At first the Germans used wagons and ploughs made entirely of wood. For a time their chief means of transportation was on pack-horses through Indian trails. But it was not long before iron mines were discovered, furnaces and forges set up, and the manufacture of many useful implements begun. In 1749 there were eight furnaces for making pig-iron, and nine forges for making bar-iron.[3]

As early as 1739 the making of public roads began in

[1] Dulany Papers. [2] *Maryland Gazette*, October 30, 1751.
[3] C. R., December 13, 1749.

earnest. First, the county courts of Frederick and Baltimore counties became active in this particular. Then, in 1750, an order in council was issued which demanded the enforcement of the old law for the clearing, marking, and improving of roads. The following year the governor in his opening speech to the Assembly made a special effort to encourage a spirit of improvement in general, and urged the straightening of the highways in particular. Later, the General Assembly not only strengthened the law requiring work on the roads, but it loaned money to Baltimore, Frederick, and Anne Arundel counties for the purpose of assisting them to open, straighten, and widen their roads. The result of all this was that sometime before the province became a state, wagons drawn by two, four, six, or eight horses took the place of the pack-horses, and transported produce and wares to and from the seaports and the growing towns of the interior.

The change that had come may also be seen from the increase in trade. In 1697 the board of trade was informed that all the laborers of Maryland were employed in planting tobacco, except coopers, carpenters, a few sailors, and a very small number of other artisans working at trades which had relation to tobacco. In 1731 there was but a small beginning in the exchange of lumber and grain for wine and molasses. The lower house in that year reported that the continuing of the people so long in "the old beaten track of raising tobacco" had made them incapable of carrying on any considerable trade or manufacture; and that only extreme want had driven some of the poorer inhabitants to the manufacture of coarse linens and woollens for their own particular use, without which they would have starved and gone naked.[1]

But in 1749 about fifty vessels were owned by the

[1] U. H. J., August 26, 1731.

inhabitants of the province. Although the trade was still chiefly in tobacco, the annual export of which was about 28,000 hogsheads, yet in that year the exports of wheat, corn, pig and bar iron, lumber, and furs were valued at £16,000 sterling. About twelve years later the quantity of exported tobacco had decreased rather than increased, while the value of other exports was reported to be £90,000, or one-half the value of all the imports from Great Britain, among which exports were 150,000 bushels of wheat and 2000 tons of iron. But this was in the midst of the last intercolonial war. As early as 1753 an anonymous friend of the lord proprietor, but one who claimed that he took his figures from the custom-house books, stated that there were exported in that year 110,567 bushels of wheat, 154,741 bushels of corn, 6327 barrels of bread and flour, 475 barrels of pork, 170 barrels of herring, 100 hogsheads and 100 bags of flaxseed, 2500 tons of pig-iron, 600 tons of bar-iron, 1,095,500 staves and headings, and 200,000 shingles.[1]

Moreover, besides that which was shipped from the province, the disadvantage still arising from having so many ports caused much produce to be carried to the large market at Philadelphia. "A great part of the wheat flour and other produce," wrote Governor Sharpe, in 1762, "is now carried to Philadelphia, the price there being always higher than in Maryland, owing to the vast trade carried on from thence to the West Indies and other parts. As the merchants there can always load their vessels at once, they can afford to give more for the cargoes than merchants in this province can give, because ours must be a long time collecting a cargo for even a small vessel, there being no town or port in Maryland where any considerable quantity of country produce can

[1] Portfolio 2, No. 7.

be purchased at once. . . . The only means to remedy the evil would be to restrain the whole trade of the province to one or two ports — a scheme not likely to be relished by the Assembly."[1] But although the Assembly did not approve of such a scheme, the growing town of Baltimore was supplying that want, in large measure, before the proprietary government was overthrown.

Again, with the exception of a little copper coin and a very limited amount of Spanish coin, tobacco was almost the sole money of the province for the first one hundred years. So long as the trade in that commodity remained in such a low state, it poorly served as a circulating medium or as a standard of deferred payments, and was, therefore, a drawback to the progress of all the industries. Thus, in the year 1729, the governor wrote: "When our tobacco is sold at home, whatever is the product, it returns to us not in money, but is either converted into apparel, tools, or other conveniences of life, or else remains there as it were dead to us; for where the staple of a country upon foreign sales yields no return of money to circulate in such a country, the want of such a circulation must leave it almost inanimate: it is like a dead palsie on the public."[2]

It was this extremely stagnant condition of the trade that at last thoroughly aroused the people to a consciousness of their need of a different money, and in 1732–33 prevailed with the Assembly to pass an act for issuing £90,000 in paper currency. Fifteen years after its issue one-third of the whole amount was to be redeemed; that is, at the end of the fifteen years all the old bills were to be called in, and on that occasion the holder was to be given, in exchange for the old, new bills equal to two-thirds the

[1] Sharpe's Correspondence, Vol. III, p. 72.

[2] Calvert Papers, No. 2, p. 69 *et seq.*

amount of the old, while for the other third he was to be given sterling bills of exchange. Sixteen years later, or thirty-one years from the date of the first issue, the remaining two-thirds were to be redeemed, and on that occasion fifteen shillings sterling were to be paid for every twenty shillings of the currency. Finally, the act provided for the sinking fund by imposing a duty of fifteen pence on every hogshead of tobacco that was exported.

For the first fifteen years, the continued low condition of the tobacco trade, the refusal of the upper house to pass a bill which proposed the payment of officers' fees and public dues in the paper currency, and the artifices of some traders, who found their interest to lie in the depreciation of those bills, reduced their credit so low that at times they exchanged at nearly fifty per cent below par.[1] But the inspection act of 1747 greatly strengthened the security of the sinking fund. Only a little more than one year later the strict observance of that part of the act which required the sinking of one-third the amount of the bills raised still higher the credit of the remaining two-thirds.[2] Thereafter, their exchange was never much below par. Furthermore, after the last of the bills had been redeemed, in the year 1764, it was found that of the fifteen-pence duty, and of the interest that had accrued on the bills of credit, there still remained to the credit of the province over £35,000, of which £25,000 were invested in English bank stock.[3] On the credit derived from that fund the province was thereafter enabled to float all the currency which the trade demanded, without the aid of an act to declare it a legal tender. As a consequence, instead of harm coming to Maryland from the act of Par-

[1] Sharpe's Correspondence, Vol. I. p. 45 *et seq.*

[2] *Maryland Gazette*, June 21, 1749.

[3] Sharpe's Correspondence, Vol. III, p. 251.

liament which forbade any of the colonies to declare its paper currency to be a legal tender, it only caused the other colonies to borrow money of Maryland. By this time, therefore, that which for a long time had been another obstacle in the way of industrial development was well removed.

In conclusion, then, it is clear that the prolonged effort to regulate the tobacco industry, in which the support of the government was so largely involved, was an almost constant source of antagonism to the lord proprietor and his government. And, finally, after the lord proprietor's power had in large measure passed under the control of the popular branch of the legislature, the regulation of that industry by the inspection act, the settlement of Frederick County by the Palatines, and the assistance which was given to trade by the paper currency were not only pushing the province forward with rapid strides toward a self-constituted state, industrially independent of the mother country, but were also bringing it more and more under the influence of the strong popular sentiment of Pennsylvania.

CHAPTER V

THE SOCIAL DEVELOPMENT

While social conditions are always closely dependent on industrial conditions, they also have much to do in determining the political activity. Where the population is sparse, where men live apart from one another, or even in small isolated groups, with no facilities for intercourse, the social pressure will be low, and — even though the sense of individual freedom be strong — the political activity will be weak and sluggish. But with the increase of population, with the coming of a diversified industrial activity, and with adequate facilities for intercourse, the strong sense of individual freedom will naturally develop into a vigorous political life. Then, with the divergence of the extremes between social classes, should the government attempt to infringe upon the people's rights to life or to property, the political life of an Anglo-Saxon people will become as intensely animated as if touched with a live coal. It is therefore important to ascertain to what extent the social conditions in the province of Maryland developed along these lines.

During the seventeenth century nearly all the people were, as already stated, engaged in the cultivation of tobacco. Both large and small planters lived on their own plantations with a number of servants that was quite proportionate to the size of the estate. Outside of the small settlement of houses — only thirty in number as

late as the year 1678 — that were scattered for five miles along the shore, within the vicinity of the seat of government, town life was unknown.[1] There were few mills and no factories. The trade was restricted to that which each planter carried on with the merchants of the mother country. There was an abundance of horses before the close of the century, and yet the lack of good roads was a hindrance to travel. More than ninety per cent of the people were Protestants, and yet until the last decade of the seventeenth century there were few Protestant services in which the people of that faith might have been united by a stronger religious and social bond. The depressing tendency of the tobacco culture and the remoteness of habitations from one another, together with the religious differences, resulted in the failure to found any public schools wherein a common interest might have been centred or wherein the social tie might have been knit among the children. Unlike what was the case in so many of the other colonies, the danger from the Indians was in Maryland insufficient to force the people together for protection. So, also, the absence of a state church and of public schools to support, the insignificant burden imposed by the necessity for defence, the slight expense incurred for the making of roads, for the erection of public buildings, or for the sake of any public improvements whatever, and the payment of so many of the civil officers in fees, left taxation so light that even it failed to arouse the strength of public sentiment that might otherwise have been expected. Finally, up to the close of this century, negro slave labor had been introduced to a very limited extent. The white servant was consequently well treated, and hence the feeling of personal freedom, which usually grows with the diver-

[1] Proceedings of the Council, 1667 to 1687–88, p. 266.

gence of extremes between social classes, was yet far from having attained its full strength.

The seventeenth century was, however, not entirely destitute of the conditions that make for social development. The people were naturally hospitable and socially inclined. There was the long narrow bay with its many deep inlets and with the numerous navigable rivers flowing into it. In no small measure this body of water supplied the place of roads. For, as already observed, until after the close of this century a very large part of the habitations were near the water's edge; and, therefore, water communication between them was not only easy but delightful. Moreover, from the waters of the bay were procured large quantities, as well as a considerable variety, of sea food and water fowl. The consequence was that, although town life was wanting, the bay supplied some of its socializing force. There were also, a few times each year, the sessions of the county courts, when many freemen were gathered at the county seats and given an opportunity for exchanging ideas. In the last half of the century the low price of tobacco, the lord proprietor's restriction of suffrage, his attempt to make the membership of the lower house such as he desired, and to interfere with its freedom of action, and some other such acts of his, supplied the people with an increasing variety of subjects, the discussion of which could not fail to promote the development of political life.

It required but another half century to bring about a social status that should make of the voters of Maryland a strong, active, and determined political body. By that time the industrial activity had become quickened and diversified, and the facilities for intercourse were rapidly increasing, as was seen in the last chapter. Then, too, the population increased from only 30,000 in the year

1710 to over 160,000 in the year 1761.[1] To complete the picture a study of the social classes still remains.

In the year 1663 Governor Charles Calvert wrote that the freemen of Maryland were "naturally inclined to love negroes whenever their purses would endure it."[2] A scheme of his for importing each year from 100 to 200 of that race failed, however, because of the small number of large estates, and because of the high price of slaves and the low price of tobacco. For the same reasons, little of the labor was performed by slaves until after the Treaty of Utrecht, in 1713, which placed the trade in English hands. Even then, although the increase of slave population was quite rapid in several of the other colonies, in Maryland, owing to the very low condition of the tobacco industry, it was rather slow. Finally, however, after that industry was put on a better footing by the inspection act of 1747, the increase became rapid. Thus, in the year after the passage of that act, the negro population was but 36,000 while in 1761 it was 49,675. They seem to have been fairly well treated, and to have given but little trouble until their number began to increase so rapidly. But by the middle of the century a law had become necessary to prevent their tumultuous assembling and their burning of tobacco houses. Even with that law, a tobacco house was occasionally burned, plots were formed to rob or even to murder their masters, a master was now and then shot by one of his slaves, and criminal assaults committed by slaves were not rare. The burning of a tobacco house was punished with death; the murderer of a master was hanged, and sometimes quartered.[3]

Next above the negro slave in the social scale were

[1] C. R., 1762. [2] Calvert Papers, No. 1, p. 249.

[3] *Maryland Gazette*, April 17 and July 30, 1751; July 23, 1752; April 26 and June 7, 1753.

the white servants of whom there were, nominally three classes; namely, convicts, indented servants, and free-willers. The convicts were those who had been convicted of felony in the mother country, and sentenced to pass a term of seven years in some English colony. The most of them were unable to pay for their passage, and were therefore consigned to an agent, who sold their obligation to seven years' service for whatever price he could obtain.

In the year 1767 it was estimated that for the past thirty years at least six hundred convicts a year had been imported.[1] By the middle of the century it became necessary to pass an act of assembly, making the testimony of one convict good against another. In the face of that law the murders and robberies committed in the year 1751, by servants of that class, were alarming.[2] So much so that the court of Baltimore County passed an order that good security of £50 should be given for every convict imported into its borders; and the court of Anne Arundel County passed a similar order. After the provincial court had set aside those orders, the Assembly, in the year 1769, passed an act requiring every master of a ship importing a felon to bring a transcript of the record of his conviction, requiring the person selling such felon to deliver the transcript to the county clerk, and requiring the purchaser to go before a justice of the peace in his county and enter into recognizance for the sum of £20 currency, said recognizance to become void only after the convict had kept the peace during the time for which he was transported or during his residence in the province.

The convicts were not the only emigrants who had not the money — about £9 sterling — with which to pay for

[1] *Maryland Gazette*, July 30, 1767.

[2] *Ibid.*, March 20, April 10 and 17, and August 14, 1751; also April 16, 1752; and March 28, 1754.

their passage. The agents of shipmasters, or of London and Bristol merchants, were ever busy giving glowing and alluring accounts of the bliss that awaited those who were inclined to embark their fortunes in the New World. In numerous places they advertised the terms on which those who had no money could obtain passage. Those terms required that the emigrants should enter into articles of agreement to become a servant for from two to five years, — usually five, — and that upon arriving in the province his obligation to serve might be disposed of in a manner which was similar to that of the convict. Those who came over on such terms were known as indented servants.

The free-willers came upon slightly different terms. They were given a few days after their arrival to engage their services as they pleased, provided the parties with whom they engaged would advance the sum agreed upon for their passage. But if the newcomer did not succeed in making such an engagement within the time limited, then he was to be disposed of like the indented servants; and the fact that the most of them were doomed to disappointment in not finding the labor they sought, rendered the distinction between the indented servants and the free-willers little more than nominal.[1]

At the termination of his bondage each servant became a freeman, entitled to fifty acres of land, a year's provisions, clothing, and tools. Until the introduction of slave labor on a large scale, servants seem to have been treated with but little severity, and many of them were sufficiently thrifty to become prosperous within a few years after their release. But after the negro slaves began to come in large numbers, the hardships of the white servants greatly increased. The treatment of the white servants,

[1] Those who came as indented servants or as free-willers are to-day spoken of as redemptioners.

in many cases, was doubtless worse than that of the slave. For, the negro being a slave for life, it was a considerable loss to his master to have his strength impaired while he was yet in his prime ; but in the case of the white servant the chances were generally good that he could endure harsh treatment and hard labor for the few years during which he was to be in bondage. Servants, as well as slaves, were forbidden by law to travel ten miles from home without a note from their master. Persons entertaining or concealing such servants or slaves were to forfeit five hundred pounds of tobacco for every night or twenty-four hours of such concealment. The master was required to pay two hundred pounds of tobacco to him who took up his runaway servant or slave. The servant thus unlawfully absenting himself was required, when recovered, to serve not exceeding ten days for every day's absence, — at the discretion of the county court, — and also by service to make good the cost of taking him up. On the other hand, however, masters not providing sufficient food, lodging, and clothing for their servants, burdening them beyond their strength, abusing them, or giving them above ten lashes for any one offence, without the permission of a magistrate, were subject to a fine not exceeding one thousand pounds of tobacco ; and if the master so offended three times the servant might be set free.[1] Many cases between master and servant were heard in the county courts, and such cases were usually decided in favor of the master. In one of the last years of the proprietary period an eye-witness described the lot of the servants as follows : "Generally speaking, they groan beneath a worse than Egyptian bondage. By attempting to lighten the intolerable burthen, they often render it more insupportable. For real or imaginary causes, they fre-

[1] Laws of 1715.

quently attempt to escape; but very few are successful, the country being intersected with rivers, and the utmost diligence observed in detecting persons under suspicious circumstances, who, when apprehended, are committed to close confinement, advertised and delivered to their respective masters, the party who detects the vagrant being entitled to a reward. Other incidental charges arise. The unhappy culprit is doomed to severe chastisement; and a prolongation of servitude is decreed in full proportion to expenses incurred, and supposed inconveniences resulting from a desertion of duty."[1]

It seems highly probable that there were many among those ill-used servants who did not prosper upon becoming freemen. At any rate, by the middle of the eighteenth century indigent freemen had become so numerous as to be felt as a heavy burden on the public. In the year 1754, after Governor Sharpe had called the attention of the Assembly to the great growth of this burden, a committee of the lower house found that for the preceding year the several counties had allowed 647,027 pounds of tobacco for the support of the poor.[2] Fourteen years later an act of assembly for the relief of the poor provided for the erection of an alms and a work house in each of several of the counties.

Furthermore, prisoners for debt were numerous. As early as the year 1732 an act of assembly provided for the release of any such prisoner upon his delivering up his estate upon oath. During the last years of the proprietary period from fifty to more than one hundred such prisoners were released at every session of assembly. Finally, as their number became so great, an act for their more speedy release intrusted the matter to the county courts.

[1] Eddis, Letters from America, pp. 63–89.

[2] *Maryland Gazette*, June 6, 1754; L. H. J., May 27, 1754.

Passing on now to the average freeman, if he had a moderate amount of property he was, nevertheless, decidedly uneducated if not illiterate. He was afforded little or no opportunity for a schooling. In the year 1671 the lower house amended a bill from the upper house for founding a school; but, owing chiefly to the difference between the religious faiths of the two houses, that bill was finally lost.[1] Twelve years later, after the lord proprietor had written a letter in behalf of one Douglas, after he had recommended that a common school should be in some way founded and that Douglas should be the schoolmaster, the governor, in reply, mentioned the remoteness of habitations from one another, and stated that under the circumstances he did not believe the people were very desirous of that means of educating their children.[2] Another writer has already pointed out that if at any time in the seventeenth century the Massachusetts law of 1647, which required every township of fifty householders to maintain a school for teaching children to read and write, had been enacted in Maryland, it would not have required the establishment of a single school, because no portion of the province was thickly enough settled to have fifty householders in an area equal to a New England township.

Francis Nicholson, who had been instrumental in the founding of the college of William and Mary in Virginia, sought in like manner to promote the cause of learning in Maryland, upon his becoming governor of that province. In the year 1695 he was so far successful as to get an act through the Assembly for the founding of one or more free schools, in which, among other branches, Latin and Greek were to be taught. A part of the funds necessary for carrying the act into execution were to be obtained

[1] Proceedings and Acts of the General Assembly, 1666 to 1676, pp. 262, 263, 264. [2] Calvert Papers, No. 1, p. 286.

from a duty on imported liquors and from an export duty on furs and certain meats; but, in the main, those funds had to come from voluntary contributions. The governor subscribed £50 toward a building and £25 a year toward maintaining a master. The members of the council subscribed from one thousand to two thousand pounds of tobacco each; and the several members of the lower house subscribed in all forty-five hundred pounds of tobacco. Plans were laid for the founding of one such school on each shore, and it was probably the hope that before long one would be founded in each county. But before a building was begun a quarrel arose between the governor and the lower house, and Governor Nicholson was succeeded by Governor Blackiston. The building of even one schoolhouse was, as a consequence, not completed until the year 1701, when the subscriptions were sold at a discount and a school — known as King William's School — was opened at Annapolis. But even then the members of the lower house and their constituents took little interest in this school or in any other means of education.[1]

In the year 1714 Governor Hart complained to the Assembly of the slender support that was given to this one school, complained that the eastern shore was still without any school whatever; and he declared it was a deplorable reflection that no better provision was made for education.[2] At the same time the clergy complained that the parish schools were very bad because there were no good schoolmasters.[3] Three years later the same governor upon the same subject pleaded with the Assembly, saying: "I have on several occasions recommended to you the absolute necessity of propagating learning in this

[1] L. H. J., May 13, 1715. [2] *Ibid.*, October 6, 1714.
[3] U. H. J., June 23, 1714.

province by making some competent provision for schools, and I would be happy if there was a foundation for at least one in every county. But as yet there is but slender encouragement given, nay, the funds that are directed for the maintenance of schools are of so inconsiderable a value that, unless you think proper to make better provision for that pious and useful end, even the school at Annapolis, which begins to increase and flourish, must for want of due support be laid aside."[1]

One great obstacle to a provision for education was the jealousy of one county toward another, and especially of those on the one shore toward those on the other. When the movement was made in Governor Nicholson's administration, the general plan seems to have provided for the founding of one school in each county within the near future. So, when it came to be felt that it would be a long time before the movement would result in the founding of so many schools, it lost support to such an extent that little interest was taken even in the school at Annapolis. But now Governor Hart was reviving the plan of founding a school in each county. He was doing this at a time when the feeling of Protestants against Catholics was stronger than ever, and, being himself a zealous Protestant, he contended that the strength of Catholicism lay in the gross ignorance and superstition which prevailed. Under these circumstances, and when the importation of negro slaves was beginning to increase, the Assembly passed an act for imposing an additional import duty of twenty shillings per poll on negro slaves and Irish Catholic servants, the proceeds of which were to be divided equally among the several counties for the maintenance of one school in each.

Furthermore, the governor led the Assembly to hope

[1] L. H. J., May 28, 1717.

that upon the expiration of the act of parliament, which imposed a tobacco duty of one penny per hogshead for the support of the college of William and Mary in Virginia, Parliament might be prevailed upon to allow the proceeds from that duty to be applied toward the encouragement of learning in Maryland. The Assembly, acting in accord with the governor's advice, drew up an address to the lord proprietor, requesting him to present the matter to the crown. That address was an earnest plea in the interest of education. In it was shown a strong desire to strengthen Protestantism and to fit natives of the province for all the offices in both church and state.[1] Although the lord proprietor was obliged to inform the governor and the Assembly that the act of parliament for the support of the Virginia college was a perpetual one, he promised his own assistance to the cause of education.[2] This was in the year 1719. The following year Governor Hart was succeeded by Governor Calvert. The Assembly, out of good-will toward Governor Hart, had given him an extra duty on tobacco of threepence per hogshead. The lord proprietor now proposed that one-half of this duty should be set apart for the support of schools. The lower house desired, instead, that the money arising on ordinary licenses should go toward that end. But the lord proprietor insisted that he and not the people had a right to that license money; and so the lower house reluctantly assented to his proposal with respect to the application of the tobacco duty.

The proceeds of the several duties were allowed to accumulate until the year 1723, when, at last, the Assembly passed an act for founding one school in each county. Fifty acres of woodland and fifty acres of pasture land were to be purchased for each school. The schoolmaster

[1] L. H. J., June 5, 1719. [2] *Ibid.*, April, 1720.

was to have the use of the plantation, but was to raise no tobacco on it; and besides this the act gave him but £20 per annum. He was to teach grammar, writing, and mathematics.

But with the exception of those in Kent and Queen Anne's counties these schools were not a success. They suffered from want of public interest, and from poorly paid and incompetent teachers. Less than four years after they had been established it was necessary to prescribe a penalty for refusing to serve as a school officer. The one in Cecil County was so complete a failure that no trace of it is left. In the year 1745 the officers of the one in Talbot County offered a reward of £5 currency for the capture of their Irish schoolmaster, who had run away with two geldings and a negro slave.[1] In the year 1750 the lower house declared that those schools were a failure. In the year 1763 Governor Sharpe wrote as follows, "It is really to be lamented that while such great things are done for the support of colleges and academies in the neighboring colonies, there is not in this even one good grammar school."[2]

After it was so generally agreed that the county schools in no way answered the end for which they had been established, a movement was made to sell the property invested in them and to apply the proceeds of the sale, as well as the proceeds of the duties by which they had been maintained, toward the founding and the maintenance of two seminaries; that is, King William's School at Annapolis was to be made a seminary, the head-master of which was to be a master of arts from Cambridge; while, on the eastern shore, another seminary was to be founded, the head-master of which was to be a master of arts from

[1] *Maryland Gazette*, August 16, 1745.

[2] Sharpe's Correspondence, Vol. III, p. 115.

Oxford. Each institution was to be a college with a preparatory department.[1] This plan was an impracticable one. The funds which were to be provided would not have been large enough for even one such institution, and the second one was suggested by nothing but rivalry between the two shores. After the bill for carrying the plan into execution had been published, it was never again brought before the Assembly.

Four years later, however, the governor again urged that something be done. This time the lower house, by a vote of thirty-eight to thirteen, resolved that the county school fund should be applied toward the founding of one seminary. That house also ordered one of its committees to consider further ways and means of accomplishing the desired end.[2] But after the committee had proposed the money arising from licensing ferries and from an import duty of one penny per gallon on rum and wine, the matter was referred for further consideration to the next Assembly, and nothing more was heard of it for several years.

By 1761 the majority in favor of selling the county school property was reduced; and a motion of that year, to apply the county school fund and the proceeds of a proposed tax on carriage wheels and bachelors toward founding a college, was lost.[3] But there was at this time in the city of Annapolis, on a lot of four acres, a vacant and unfinished house, which had originally been intended for the governor's mansion. After the money appropriated for the erection of it had been expended, the building was not yet enclosed; and as the lower house would appropriate no more for that end, it had, up to this time, stood in that unfinished condition for seventeen years.

[1] *Maryland Gazette*, August 1, 1750.
[2] L. H. J., May 16 and 21, 1754.
[3] *Ibid.*, April 30 and May 5, 1761.

Furthermore, it has been observed that back in Governor Hart's administration the lower house asked that the money arising on ordinary licenses should be applied toward the support of schools. Although for the past fifteen years the lord proprietor had permitted that money to be used for public purposes, — wholly military, — the question as to who had a right to it was yet undetermined. These were the circumstances under which the lower house now proposed to complete the unfinished executive mansion for a college hall and to apply the ordinary-license money, together with the proceeds of an import duty on wine and of a tax on carriage wheels, bachelors, card tables, and billiard tables, toward the maintenance of the college.[1] As the governor and a majority of the upper house felt that the lord proprietor had no valid claim to the ordinary-license money, they privately approved of this plan.[2] But upon Governor Sharpe's submitting it to the lord proprietor's secretary, that gentleman, with a mind ordinarily chaotic, flew into a passion, and so much heat was generated that it seems to have melted some of his speech. Thus, he said: "Can they constitutionally do it, to take his Lordship's property given with generosity and a sufficient tract of land whereon the House Governor's and Proprietor's House stands by their request yielded to and given and not finished by them from contumely, have they any plea to shittlecock his Lordship's property when or how they please? feign charity, a school academy, an unnecessary expense during the infancy of the colony, before ignorance in general by foundations to improve by Grammar and common Arithmetic and this their scheme with affrontery without any remonstrance to yield to his Complyance their Lord Paramount, send to

[1] L. H. J., May 6, 1761.

[2] Sharpe's Correspondence, Vol. III, pp. 125, 126.

him for his right *ad libitum* with us, the essence of your Legislature and administration of your government I conceived such conduct with violence assumed has nor can have any tendency but that of annihilating with him all right, Honor, and Dignity, rendering him low and contemptible with reproach not fit to govern."[1]

So failed another attempt to found a college. Only a few years later the lord proprietor was forced to give up his claim to the ordinary-license money, and very soon after the overthrow of his government the long-neglected house was completed for a college hall. But, until that overthrow, the only advance along educational lines was that which was begun in the year 1772 when some freemen of the counties of St. Mary's, Calvert, Charles, and Prince George's proposed that the county schools of those four counties should be united.[2] Subscriptions were raised for further increasing the funds ; and although this movement lost the support of Calvert County, it resulted in the founding, in the year 1774, of Charlotte Hall at Cool Springs in St. Mary's County.[3]

The facilities which the province of Maryland offered for obtaining an education were, therefore, decidedly poor. The county schools amounted to little or nothing. The parish schools seem to have been equally bad. Upon the death of Benedict Leonard Calvert, in the year 1730, King William's School was left a donation amounting to £40 per annum ; and yet the instruction given in that school does not seem to have risen to any high degree of excellence. There was no college. And probably the best school in the province was the private one for teaching Latin and Greek, which was kept by Rev. Thomas Cra-

[1] Sharpe's Correspondence, Vol. III, p. 146.

[2] *Maryland Gazette*, July 30, November 5, 1772.

[3] Laws of 1774.

dock of Baltimore County. The writer of an article published in the *Maryland Gazette*, in the year 1773, expressed his regret for the want of learning in the following words: "Even in private affairs the inconveniences and mischiefs flowing from the ignorance and barbarism of the commonality are severely felt by society. But these are trifles light as air when compared to the more fatal errors, which may be committed in the public walks of life, through a shameful deficiency of general knowledge."[1]

Nevertheless, eighteenth century Maryland had her educated men. The ceaseless agitation of the educational question would indicate this. Some received their education in the mother country before coming to the province. As early as the year 1754 there were at least one hundred Maryland students in the academy at Philadelphia.[2] Others attended the college of William and Mary in Virginia. The sons of the most wealthy Protestants were sent to the universities of England, while several of the Catholic youths were educated in France.

The consequence was that the favored few had better educational advantages than the united efforts of the province could have provided. Those who were educated in Philadelphia were surrounded by an atmosphere in which democratic and liberty-loving sentiments were especially strong. Moreover, the spirit of rivalry among the educated Marylanders was more vigorous than it would have been had they all been taught in the same school.

But what went still further toward making the educated men a power in political affairs was the fact that the most of them were lawyers. The people were strongly inclined to litigation; but the clergy of the Established Church were

[1] *Maryland Gazette*, November 4, 1773. [2] *Ibid.*, March 21, 1754.

in disrepute; country life in a healthful climate caused the physician to be little in demand; the teacher was given no chance; and the country was too young for literature and art. As it was for the interest of the lawyer to stand up for the political rights of the people, it was natural that many of that profession should find their way into the lower house of Assembly. In the course of the last controversy between the two houses, the government party denounced the lawyers in strong terms and ascribed the whole trouble to the presence of so large a number of them in the lower house. One of the party, in particular, was speaking of the lawyers when he said: "To gain the voice of the people, to mislead their judgment, and to render them the tools wherewith to execute their vile and infamous purposes they put on the mask of patriotism; declare vehemently against public measures; stigmatize their rulers by the most unjust and villanous accusations, and set themselves up as the only men capable of saving or reforming the state. The most minute errors in administration are construed into premeditated designs against the liberties of the people; they prognosticate dangers which they do not believe; and seem to dread events, they are conscious, can never happen."[1] But the more impartial judge of their conduct said: "They anticipate the evil, and judge of the pressure of the grievance by the badness of the principle. They augur misgovernment at a distance, and snuff the approach of tyranny in every tainted breeze."

Finally, if the ignorance of the common people enabled the lawyers to have greater power over them, the wealth and luxury enjoyed by the public officers made those common people more suspicious of the government and still further strengthened the alliance between the lawyers and

[1] *Maryland Gazette*, May 13, 1773.

the people. It was no difficult matter, therefore, to make them feel that they were being fleeced in order to enable their rulers to live with affluence in a fashionable society. The city of Annapolis was by the middle of the eighteenth century a social centre of some importance. The French hairdresser was in good demand. The high headgear of the ladies, the powdered periwigs of the gentlemen, the rich laces, silks, velvets, and gay colored costumes of both ladies and gentlemen followed closely the latest fashions of the mother country, and, with an unsparing use of the stay, gave to social circles a dignified and courtly charm. Chariots of rare elegance, the coach and four, and the sedan chair moved along the highways. The finest residences have been described as remarkable for their large size and striking appearance. The tables of the most wealthy were adorned with plate and cut glass, and even profusely provided with choice wines, meats, and dainties. The members of this society were cultured, refined, and polished. Special mention of the charm of the ladies on social occasions has been made by more than one eye-witness. In the year 1770, one of those witnesses wrote, "I am persuaded there is not a town in England of the same size as Annapolis, which can boast a greater number of fashionable and handsome women, and were I not satisfied to the contrary, I should suppose that the majority of our belles possessed every advantage of a long and familiar intercourse with the manners and habits of London."[1] Three years later the same witness again wrote: "It is but justice to confess that the American ladies possess a natural ease and elegance in the whole of their deportment; and that while they assiduously cultivate external accomplishments, they are still anxiously attentive to the more important embellishments of the mind. In conver-

[1] Eddis, p. 31.

sation they are generally animated and entertaining, and deliver their sentiments with affability and propriety."

Nor was there a want of opportunity for social display. There were several fashionable balls each winter, and there were similar balls on a few state occasions. Furthermore, the theatre became so great a success as to arouse no little enthusiasm. The wits of two literary clubs provoked pleasing smiles, if not loud laughter. The pleasures of the fox hunt were seemingly boundless. With respect to horse racing one wrote: "Our races, which are just concluded, continued four days, and afforded excellent amusement to those who are attached to the pleasures of the turf; and surprising as it may appear, I assure you there are few meetings in England better attended or where more capital horses are exhibited. In order to encourage the breed of this noble animal, a jocky club has been instituted, consisting of many principal gentlemen, in this and the adjacent provinces, many of whom have imported from Britain, at a very great expense, horses of high reputation."[1]

By the time this society had become truly magnificent for so young a country it had come to pass that the members of one family were holding most of the principal offices below the governor: the governor was a brother-in-law of the lord proprietor; the governor and the members of that one family were leaders in society; and, at the same time, it was known that in addition to the large sum of money which was yearly drained from the province to pay the lord proprietor his territorial revenue, the principal office-holders were obliged to give the lord proprietor's secretary, who resided in England, £600 sterling per annum out of their income.

Before the end of the proprietary period, therefore, the

[1] Eddis, pp. 106, 107.

facilities for intercourse had been provided, the extremes of social classes had been far extended, and a large part of the educated class was arousing and directing the opposition of the ignorant commonalty against a small body of office-holders and society leaders that were closely united by the ties of kinship.

PART II

GOVERNMENT

CHAPTER I

THE EXECUTIVE

In the light of what has thus far been presented, the organization and the development of the government may now be made intelligible. The analysis of the charter has shown that the lord proprietor was originally placed at the fountain head of every department of government. To him alone was power granted by the king. He was given the sole right of creating offices, of appointing officers, of delegating to each such powers as he deemed expedient, and of directing them, from time to time, in the performance of their duties.

Immediately under the lord proprietor was, first, the governor, and then the other great executive officers, all serving in response to their lord's appointment during his pleasure. Farther down the scale were the minor officers, usually appointed and instructed by some one of their immediate superiors, but, likewise, appointed only during pleasure. In this manner, as in any real kingdom, power was transmitted from above downward, and all officers kept dependent on the lord proprietor.

With the exception of the years from 1675 to 1684, and the year 1732–33, the lord proprietor and his secretary resided in England. But all the other officers resided in the province. The greatest of them were the governor and chancellor, the members of the council of state, the secretary, the commissary general, the two judges of the land office, and the attorney general. Chief among the

minor officers were a sheriff, a deputy commissary, several justices, and a clerk for each county, a treasurer for each shore, and a naval officer for each of five districts. Still lower in rank were the constable of the hundred, and the overseer of the highway precinct.

During the entire proprietary period, six persons bore in succession the title of lord proprietor. But the third and the last bore it for so short a time that it is not worth while to make mention of them here. The other four were: Cecilius Calvert, 1632 to 1675; Charles Calvert, 1675 to 1715; Charles Calvert, 1715 to 1751; and Frederick Calvert, 1751 to 1773.

The father of Cecilius was the first Lord Baltimore, who, at one time, was a chief secretary of state under James I and highly esteemed by Robert Cecil for his knowledge and penetration into state affairs. The wife of Cecilius was the eldest daughter of Thomas Arundel, one of the most influential of the Roman Catholic noblemen in England. In the year 1634 Cecilius became a member of Parliament. Both the form and the contents of his several commissions and instructions relative to the government of Maryland indicate that he was a trained administrator, well versed in English law. On several occasions his correspondence and instructions show his firmness; and yet, while he never was disposed to make unnecessary concessions, he was so discreet and so politic that he yielded when by so doing he might prevent a dangerous uprising. Although he never visited the province, he was deeply interested not only in the success of its government, but in its industrial development. It was the object of his careful thought and attention; and it has been estimated that he expended upon it, from time to time, £40,000 sterling, from which he could have received but small returns.

Charles, the second lord proprietor, had been governor of the province fourteen years before succeeding his father, Cecilius; and with the exception of a visit to England in the year 1676, he resided in the province nearly nine years after becoming lord proprietor. He appears to have given his father much satisfaction during his service as governor. He certainly was a busy, industrious man, with a strong personality and considerable hard business tact. But he was irritable, contentious, tenacious, greedy of private gain, and more interested in introducing slave labor than in elevating the level of humanity by encouraging such institutions as schools and churches. He was at one time annoyed by a report that he was so stingy as to be in danger of starving. He was intent upon suppressing all opposition, but not being a leader of men he endeavored to accomplish his end by force and intrigue. As a consequence of succeeding his uncle, Philip Calvert, as governor soon after the suppression of the Fendall rebellion, a bitter jealousy arose between nephew and uncle, so that at one time Charles complained that Philip was trying to draw the affections of the people from him.[1] Charles married the widow of Secretary Henry Sewall, to whom had been granted two manors: one of five thousand acres, and another of one thousand acres; and the five children of the widow seem to have been married with the design of gaining for the government the strongest possible support that could be based on kinship.[2] He, however, failed to govern successfully and aroused such opposition that the government was taken from him. Yet after its loss he continued to his last years to contend vigorously for his territorial rights.

[1] Calvert Papers, No. 1, p. 251.

[2] Sparks, "Causes of the Maryland Revolution of 1689."

Charles, the fourth lord proprietor, bore a tarnished reputation in England because of the part he played in disgraceful intrigues with the Prince of Wales. Yet during a tour on the Continent he made a favorable impression on a man of no less renown than Frederick the Great. In 1734 he became a member of Parliament and later was appointed Junior Lord of the Admiralty. He was doubtless a man of many accomplishments, easy and graceful in speech and general bearing. But his intellect was shallow, and he greatly overestimated his own importance. He became lord proprietor when he was but sixteen years of age; and although he had a guardian, the executive within the province was weaker and more neglected during his administration than at any other time. The members of the council of state were left with insufficient reward for their services. Until the appointment of Governor Bladen, in 1742, the authority delegated to the governor was restricted only to a very limited extent; and the correspondence between governor and lord proprietor seems to have been surprisingly small in amount. Nevertheless, Charles was tenacious of his rights and unwilling to make any compromise until after a contest had been long continued. His failure to instruct the governor was in part made up by his own veto of several acts of assembly, until the opposition, aroused in consequence of these, made it dangerous for him to exercise that right. Finally, during his visit to the province in 1732–33, mainly for the purpose of settling the boundary dispute with the Penns, he was quite successful in removing the disorder into which the government had fallen; and his liberal offer then first made to the Palatines resulted in the beginning of the larger development of the province.

Frederick, the fifth lord proprietor, was the most con-

ceited of them all, yet he was a man of still less worth than his immediate predecessor. His aspirations to be an author made him a laughing stock. He had the reputation of being a libertine. In 1768 he was indicted for an infamous crime. Although justly acquitted, the charge seems to have banished from the province what little respect for him had lingered there. He seemed desirous of getting all the money he could from the province in order that he might win and retain, by means of that money, the flattery of those who like himself were seeking the ephemeral pleasures of life. Still, his desire to avoid the charge of oppressing his Maryland tenants caused him to be somewhat lenient and to make concessions. He was moderate, smooth, clear, and, occasionally, somewhat ingenious in his messages to the governor and the Assembly. But with the exception of providing some of his favorites with lucrative appointments, he seems to have been little interested in affairs pertaining solely to the government, and left them largely to the care of his secretary, who, until 1766, was his uncle, Cecilius Calvert, and after that, Hugh Hamersly.

Secretary Calvert, to whom was intrusted so largely the proprietary interests, at once endeavored to make himself more important than the governor. He was a man whose active mind exhibited a rare mixture of shrewdness and confused thinking ; and the opposition of the anti-government party occasionally kindled his wrath, or aroused his indignation to a high pitch. The large interference of Frederick in making appointments, and the desire of Secretary Calvert to exercise his authority, resulted in too great a reduction of the governor's patronage and power. However, after Secretary Calvert had been succeeded by Secretary Hamersly, and Governor Sharpe by Governor Eden, that evil was removed, because the governor was

then bound to the lord proprietor by as close a tie of kinship as was the secretary.

During the few years when the lord proprietor was in the province, he administered the government in person; but at other times a governor, as his representative, was the chief administrator of that government. According to the original nature of the proprietary system, the governor was to be kept entirely dependent on his chief, while all other officers were to be subservient to both lord proprietor and governor. The governor was appointed only during the pleasure of his chief, who instructed him from time to time in the performance of his duties. From the year 1648 he was made to swear that he would accept no office, relating to the government of the province, from any other person or authority than that of the lord proprietor, whom he also swore to counsel and advise as occasion should require for the best interests of the province.[1] The journals of both houses of Assembly, as well as an account of all other important transactions of the government, the governor was expected to transmit to the lord proprietor.

It was, however, not entirely through the governor that the lord proprietor exercised his control over the government. For the lord proprietor not only reserved to himself the privilege of appointing the members of the council, the commissary general, the judges of the land office, and the attorney general, but he defined their powers and duties, occasionally gave instructions to them, and received information from them concerning the affairs of the province. At one time he valued such information received from the attorney general more than that received from the governor.[2] Furthermore, on critical occasions, or when-

[1] Proceedings of the Council, 1636 to 1667, p. 209 *et seq.*

[2] Dulany Papers.

ever some great controversy arose, important communications passed between the lord proprietor on the one side, and the lower house, both houses conjointly, or the governor and council on the other. Finally, the lord proprietor reserved the right of vetoing any act of assembly, even after it had been assented to by the governor.

On the other hand, after the restoration of the proprietary government in 1715, the governor was made responsible, not only to the lord proprietor, but also, to some extent to the crown. For from that time the lord proprietor's appointment of a governor had to meet the approval of the crown. From that time, also, the governor was instructed in detail by the crown, with respect to the enforcement of the laws of trade, and put under oath and bond to observe such instructions; and during the intercolonial wars the governor received directions from the home government with respect to the raising of men and supplies.

Nevertheless, although the governor was made so dependent on the lord proprietor, although the proprietor exercised his powers through other channels than that of the governor, and although the governor became in a measure responsible to the crown, it was mainly to the governor that the proprietor delegated all those monarchical powers which the charter had conferred on himself. It was also mainly to the governor that the proprietor issued his instructions.

As military chief the governor was made lieutenant general and admiral, and empowered to do whatever was necessary for the defence of the province or the suppression of rebellion. He was, therefore, authorized to be the military organizer and commander both by land and by sea.

As chancellor, he was keeper of the proprietor's seal, and

issued all grants of land, all commissions for office, all pardons, licenses, writs, and proclamations.

As chief magistrate, he was given power to appoint all necessary officers for the preservation of the peace and the administration of justice, power to issue and enforce ordinances, power to establish ports, markets, and fairs, power to pardon offences (except for high treason) and remit fines, and, finally, power to execute all other measures necessary to good government.

As the head or constituent part of the legislature, he could summon the freemen to legislative Assembly, prepare laws for the consideration of that Assembly, assent to bills and enact them into laws in the lord proprietor's name, and adjourn, prorogue, and dissolve the Assembly.

And as chief justice during the first proprietary period, he played an important rôle in the hearing, judging, and awarding execution in both civil and criminal cases.[1]

Previous to the Revolution of 1689, the governor was authorized to appoint a substitute at his death or during his necessary absence from the province; and that authority was exercised on several occasions. But after 1715 the president of the council was to serve as substitute when there was no governor, which, however, happened but once, and then only from May, 1752, until March, 1753.

Within the province the governor was, therefore, the centre from which proceeded the military, the administrative, and the judicial authority, and, in large measure, also, the legislative activity.

Although the lord proprietor reserved to himself the right of appointing the members of the council of state and the other leading officers, those appointments were usually made in accordance with the governor's recom-

[1] Proceedings of the Council, 1636 to 1667, pp. 49, 135, 139, 323.

mendations. But after the threatening clamor of the opposition had caused the lord proprietor to refrain from exercising his veto power, his instructions bound the governor much more closely until the administration of Governor Eden.

Until after 1732 the governor was usually allowed wide discretion. His instructions were, in large measure, confined to directions relating to territorial affairs and the appointment of officers, or forbade him to assent to any act that would be an encroachment on the lord proprietor's prerogative, that would alter the constitution of an office, or that would interfere with some favorite law.

But in 1743 the lord proprietor instructed Governor Bladen to assent to no law that might in any manner weaken the power and authority of the government, stated the conditions that should be complied with before he should assent to certain acts, and, in conclusion, said, "And if anything of very great consequence comes under your consideration, suspend doing anything till you have acquainted me with it and received my directions."[1] Besides the numerous special instructions sent to Governor Sharpe his standing instructions directed: that he should recommend for vacancies in the council, but make no appointment until the number was below seven, and then such appointment to be subject to the approval or disapproval of the lord proprietor; that his appointment to any office should be provisional only; that he should act in strict conformity with the charter; that he should give his assent to no act of an unusual or extraordinary nature and importance which might be prejudicial to the lord proprietor's charter prerogative or the property of his Majesty's subjects, without the insertion of a clause to suspend the execution of the act till the lord proprietor's

[1] C. R., March 26, 1743.

assent was known; that he should suffer no act to pass that introduced the English statutes in gross, that interfered with the law of 1702 providing for the clergy, or that divided a parish without the incumbent's consent; that he should suffer no private act to pass without giving the person concerned a chance to make his defence; that he should pass no act relating to the paper currency without a suspending clause; that only one matter should be provided for by the same bill, or at least that there should be no riders, or any provision foreign to the title; that no schoolmaster should be allowed to teach without having first obtained the lord proprietor's license; that the lord proprietor should be given notice of every vacancy in church livings; that the instructions to all previous governors should be conformed to in so far as they were not altered by the present or later instructions; that accounts of all important transactions should be sent to the lord proprietor and to Secretary Calvert, and that the above instructions should be entered in the council book.[1]

But after it had become clear that the lord proprietor was seeking to prevent undesirable legislation by instructions instead of by exercising his veto power, the opposition was not to be silenced by such a change of tactics. Instead of the veto, the instruction became the object of attack. Moreover, while the veto had necessarily been made public, an instruction might, in many cases, be kept private. Hence it became easy to ascribe the defeat of any favorite bill of the lower house to some "unreasonable instruction of his Lordship's."[2] First, the anti-government members of the lower house murmured among their constituents against such instructions. Then, in

[1] C. R., March 17, 1753.

[2] Sharpe's Correspondence, Vol. III, p. 52.

1762, the complaint was for the first time inserted in a message from the lower to the upper house. Finally, in 1769, after the appointment of Eden as governor, the lower house sent a long statement of their grievances to the lord proprietor, charged him with having prevented Governor Sharpe from doing what he thought would be for the best interest of the province, and expressed the hope that the authority delegated to the new governor might be "so unrestricted as to permit a free and full execution" of his abilities.[1]

About the same time, or a little earlier, must have come to the province the charge against the lord proprietor of the infamous crime, and nothing more seems to have been heard of his interference. The people had, in reality, made the governor supreme over all except themselves.

The proprietary governors were: Leonard Calvert, 1633 to 1647; Thomas Greene, 1647 to 1648; William Stone, 1648 to 1654; Josias Fendall, 1657 to 1660; Philip Calvert, 1660 to 1661; Charles Calvert, 1661 to 1684 (a board of four deputy governors administered the government from 1684 to 1689); John Hart 1715 to 1720; Charles Calvert, 1720 to 1727; Benedict Leonard Calvert, 1727 to 1731; Samuel Ogle, 1731 to 1732, 1733 to 1742, 1747 to 1752; Thomas Bladen, 1742 to 1747; Horatio Sharpe, 1753 to 1769; and Robert Eden, 1769 to 1776.

With scarcely any loss, those governors who served previous to the Revolution of 1689 may be passed over without calling special attention to their personal traits or to the principal features of their respective administrations. But with respect to those who served after the year 1715 such special attention will be more helpful.

John Hart was appointed by the crown in the year

[1] L. H. J., December 20, 1769.

1714, and upon the restoration of the proprietary government in the following year, the lord proprietor continued him in his station. He came to the province after it had been without a governor for five years, and while it was yet suffering from the effects of the war of the Spanish Succession. He is deserving of praise for the zeal with which he strove to bring about a better condition of affairs. For he was enthusiastic in recommending that provision should be made for education and for church discipline. He earnestly sought an improvement in the condition of the tobacco trade. He recommended the raising of hemp on the eastern shore, and that provision should be made in each county for providing the province with more native seamen. He called attention to the need of better roads. He also made a proposition for building a governor's house. But the general ability of the man fell far short of his zeal and his good intentions, and as a consequence very little was accomplished in the way of realizing his cherished ideals. On the other hand, his quarrel with the agent Carroll has already been noticed. He became involved in a noisy wrangle with the leading Catholics. He preferred the royal government to the proprietary government, and seems to have hoped that the restoration of the latter would end in a failure. Yet as chancellor he incurred the censure of the home government by taking the part of the people against Birchfield, his Majesty's surveyor general of the customs. Although he had many warm admirers among the more zealous Protestants, yet, as a consequence of all his trouble he was broken down in health before his recall in the year 1720.

His successor, Charles Calvert, was a cousin of the lord proprietor. The honesty and sincerity of this governor in protecting the lord proprietor's interests are not questioned. But he suffered from bad health and had the

reputation of being a poor manager of his own private affairs. It was during his administration that the bad condition of the tobacco industry began to create considerable commotion, and that the animosity of the lower house became greatly aroused over the question of English statutes, officers' fees, and the financial support of the council. While that animosity was directed mainly against the upper house, the governor's speeches to the Assembly — in which he was mild and moderate in merely coaxing the lower house to acknowledge the validity of the claims of the lord proprietor and the upper house — had but little effect. He was, in short, a weak governor.

Benedict Leonard Calvert was a brother of the lord proprietor. But he proved to be a still weaker supporter of the proprietary interests. To the discontent of the last administration was added the bitter hostility of the clergy, arising out of controversies with respect to their support and discipline. The governor felt that the people were getting control of the government, while his confession of his own lack of ability, which appeared on several occasions, is best seen in the concluding words of one of his letters to the lord proprietor, "My weaknesses," he says, "I doubt [not] are many, but sure I am they cannot outnumber my affections to your service."[1] While declaring open enmity to the most able leaders, Dulany and Bordley, he seems to have thrown himself on no other support than the pride of his ancestry. For to both houses of Assembly he once said: "As nothing can be more shocking to an ingenious mind than a distrust of professed sincerity, so I hope you will exert that peculiar characteristic of Englishmen called Good Nature, and not be mistrustful of me because I am your Governor, as some persons void of all principle would without doors suggest.

[1] Calvert Papers, No. 2, p. 80 *et seq.*

But rather believe that (as I have the honor to descend from those who were the nursing fathers of this colony when I may say it was yet at the breast) their affections for this province with their blood descending is equally infused in me, and that I want nothing so much as to aliken myself yet more to them [and to have] such confidence [from] you as they from your ancestors enjoyed."[1] He promised to devote every faculty of his mind and body to the service of the province. But after the lower house had threatened to withhold a part of his financial support, he spoke of himself as being made a remarkable sacrifice at a time when "slights and disregards to his Lordship and his family" had appeared "in the full gloom of dark envy and unreasonable malevolence."[2] After he had become broken down in health he died on his way to England.

When Governor Ogle arrived, he must have found affairs in an extremely critical condition. Soon after his arrival he wrote that the country was as hot as possible about the English statutes and the judge's oath; that officers were held in such contempt that they did not receive one-half their fees; that his predecessor had expressed a good deal of concern at the want of courage which the council had shown upon several occasions; and that the account given of the Assembly was enough to frighten a man out of his wits. He thought that it would puzzle the best capacity in the world to do one-half of what was needed for the lord proprietor's service. Yet he was sure that nobody in the world could set about that service with more zeal and more true concern for the lord proprietor than he should do.[3]

And it cannot be denied that Ogle did possess many of

[1] L. H. J., October 3, 1728. [2] U. H. J., August 1, 1729.

[3] Calvert Papers, No. 2, p. 81 *et seq.*

the essential qualities of a successful governor. He felt the need of filling the more important offices with the most able men, and of properly rewarding them for their services. It was, accordingly, in line with his policy that Daniel Dulany was won over from the strongest leader of the opposition to the strongest supporter of the lord proprietor and his government; and so long as there was reason to hope for harmony, Ogle's speeches to the Assembly were always pacific in spirit. But his zeal seems to have cooled, and he could not silence the opposition.

The controversy over English statutes was soon settled, and by giving an office to each of four of the ablest members of the lower house their support was secured. But the act of assembly, by which the government had been supported for sixteen years, was suffered to expire, and the house expelled those four who had been appointed to office. Then the opposition found new leaders who became so loud and so exorbitant in their demands for parliamentary privileges, and so unmanageable in their views with respect to the support of government, officers' fees, ordinary licenses, surplus lands, and alienation fines on lands devised, that the lord proprietor, in order to restore quiet, resorted to a proposition for the payment of his quit-rents and to a change of governors. But after Bladen had shown himself unqualified to govern, Ogle was reappointed. From that time he was popular. The act of assembly for the inspection of tobacco and the limitation of officers' fees, which was passed only a few months after his restoration to office, increased the general good feeling; and just after his death in May, 1752, the editor of the *Maryland Gazette* pronounced the following eulogium upon him: "His great constancy and firmness in a painful illness, and resignation to the divine Will, were suitable to a life exercised in every laudable pursuit. His long

residence among us made him thoroughly acquainted with our constitution and interests, and his benevolent disposition induced him invariably to exert all the influence his station, as Governor, gave him, and every means which his good sense could suggest, to promote the public good. He was a pattern of sobriety and regularity ; a sincere lover of truth and justice ; and a most religious observer of his word. His example introduced and established a habit of sobriety and civility among us. That he was a man of fine parts and understanding, and that his administration was just, mild, and equitable, his enemies (if such a man could have any) dare not deny. In private life he was an amiable companion, in his conversation affable, cheerful, and instructive, but never assuming ; and in his friendship, warm and sincere."

Thomas Bladen was a brother-in-law of the lord proprietor, and was the only governor who was born within the province. He had small capacity for governing. His request for £2000 in currency to complete the governor's house after he had expended what had been appropriated for that purpose, and his taking advantage of an old law which authorized him and the council to levy one pound of tobacco per poll, looked too much like encroaching on the people's taxing power. The result was that he soon became unable to manage the opposition.[1]

During Governor Sharpe's administration was waged the last intercolonial war ; and because of lack of harmony between the lord proprietor and the people — especially because the lower house stubbornly insisted on taxing offices and the lord proprietor's estates, and on denying the proprietor's right to ordinary licenses — Maryland failed to give much assistance in carrying on that war. Then, too, the war was followed by the passage of the

[1] L. H. J., June 25 and July 1, 1746.

Stamp Act. It was, therefore, a most trying time for the governor. It was his duty to be impartial toward the crown, the lord proprietor, and the people, and, also, at times, to protect the province from the common enemy. But Sharpe showed himself equal to the occasion. He was a member of an able English family. Through the assistance of one of his brothers, he received an important military appointment soon after the war broke out, and was also chosen a surveyor general of his Majesty's customs. He kept the lord proprietor well informed as to his interests, and left him so little chance to complain that when Eden was appointed his successor, no other reason could be assigned for so doing than the desire to give a lucrative appointment to a brother-in-law.

Although the false patriots strove to throw Sharpe's conduct into an invidious light before the people,[1] the predominating respect and esteem in which he was held by the people is best seen in addresses of the lower house, the clergy, and the county courts, just before his retirement. It was at that time that the lower house said to the lord proprietor, "Though a retrospection upon the proceedings of this house will not permit us to say that Mr. Sharpe always paid a due regard to the interest of the province, yet we must acknowledge it is our opinion that his own inclination led him very much toward that desirable object."[2]

In an address signed by thirty-five of the clergy is the following, "We beg leave to take this opportunity of gratefully acknowledging those amiable virtues, both in your public and private character, which have justly procured you the esteem and affection of all ranks, and must forever endear the name of Governor Sharpe to the inhabitants of Maryland."

[1] Portfolio 4, No. 53, Stephen Bordley to Governor Sharpe.

[2] L. H. J., December 20, 1769.

In the address from the justices of Kent County is the following: "During your Excellency's residence here the King's prerogative, his Lordship's rights, and the liberty of the people have been equally your care. . . . The open, polite, and free benignity of disposition so natural to your Excellency has rendered all address to you easy. . . . At several different periods when it required much skill and judgment to direct the political helm, affairs were so wisely and prudently conducted by your Excellency that the people of this province found themselves under fewer embarrassments than those of other places."

The following came from the justices of Frederick County, "The unremitting assiduity of your Excellency in discharging the duties of your station, and the constant attention you have manifested in promoting the welfare of the people, demand our warmest acknowledgments."

Finally, the justices of St. Mary's County said, "Permit us to express the great concern we are under at the apprehension of being shortly deprived of a Ruler who has proved himself a strict observer of every relative duty, and a steady friend to constitutional liberty."[1]

His successor, Robert Eden, was, however, no enemy to constitutional liberty, but, like Sharpe, was a popular governor. He was doubtless a man of less ability, resolution, and diligence in state affairs; but he was much less interfered with by the lord proprietor. He was courteous, easily accessible, fluent in speech, and possessed of a good amount of political tact. Moreover, in social circles, he was a favorite. When the great hostility arose over officers' fees, it was directed against the members of the upper house rather than against the governor; and when the great struggle came with the mother country,

[1] *Maryland Gazette* and Gilmore Papers.

it was with much regret that the people of Maryland saw Eden leave the province.[1]

With such men as Sharpe and Eden for governors at a time when the degenerate Frederick and his successor, a bastard son, were losing proprietary control, the transition from the old to the new system of government was made with less violence.

In contrast with those colonies in which the governor's salary was dependent on annual appropriations, a good financial support for the governor of Maryland was secured in the year 1704 by a perpetual act of assembly. During the first thirty-nine years of the feudal period, however, the form in which the needs of the government were supplied was subject to frequent change. It is probable that during those years the governors received their support, to a considerable extent, from the sale of licenses to trade with the Indians. In the year 1642 the Assembly imposed an export duty of five per cent on tobacco for the support of government. Governor Greene was charged with promising to join with the people against the lord proprietor on the question of the validity of certain laws, if the Assembly would give him, for one year's support, twelve thousand pounds of tobacco, thirty barrels of corn, and a house to live in.[2] In the year 1650 the Assembly gave to Governor Stone one-half bushel of corn per poll. In the year 1658 Stone received from the lord proprietor a grant of a manor of five thousand acres, a part of which was a reward for "good and faithful service." Josias Fendall and Philip Calvert also received land as a reward for service. From 1662 to 1669 the Assembly gave Governor Charles Calvert twenty-five

[1] Steiner, "Life and Administration of Sir Robert Eden."

[2] Proceedings and Acts of the General Assembly, 1637–38 to 1664, p. 321.

pounds of tobacco per poll. But in 1669 he was given, instead, an export duty on tobacco of sixpence per poll.

In 1671 an act of assembly gave the lord proprietor, for life, a duty of two shillings per hogshead, one-half of which the lord proprietor was to have in consideration of his receiving his quit-rents and alienation fines in tobacco at twopence per pound, and the other half was intended by the Assembly to provide a support for the governor and council, and a necessary supply of arms and ammunition. An act of 1676 continued the same duty to the new lord proprietor. But after the royal government had been established, the Assembly, in 1692, gave the whole shilling of that two-shilling duty to the governor. In 1701, however, the crown directed that one-fourth of the shilling should go toward providing the province with arms and ammunition.[1] After 1704 the act imposing the duty for the support of government, and which at that time was passed for an unlimited period, was not repealed. Yet from 1717 to 1733 there was substituted in its place the act which imposed a duty of three shillings and threepence per hogshead, two shillings of which were given as an equivalent for quit-rents and alienation fines, and fifteen pence for the support of the government. The former duty of twelve pence was at this time increased to a fifteen-pence duty because of the increase which had recently been made in the size of the hogsheads, and all of it was given to the governor. Finally, from the expiration of the law of 1717, — which occurred in 1733, — until the overthrow of the proprietary government, the governor received for his salary the duty of twelve pence, which was collected by the law of 1704. But it was collected in the face of standing resolutions of the lower house that a law passed during the royal government was

[1] U. H. J., May 12, 1701.

not in force after the restoration of the proprietary government, and that if it were in force, one-fourth of that duty should go toward purchasing arms and ammunition for the province. By 1756 the duty had come to amount to about £1400 currency per annum.[1]

To Governor Hart the Assembly gave an additional duty of three pence per hogshead as a special encouragement. But in the interest of education, the lord proprietor, in 1720, suggested that one-half of that duty be given for the support of schools. After being thus reduced, the Assembly gave it for a term of only three years instead of during a governor's administration. In 1732 the term was reduced to one year, and after that it was seldom given.

For several years before the Revolution of 1689, and again from the beginning of the eighteenth century, the lower house was occasionally urged to provide means for building a governor's house. It was not until the year 1732, however, that the first appropriation was made for that purpose. Even then no action was taken until ten years later, when the former appropriation of £3000 currency was increased to £4000 currency. But even with this provision the governor's house was not completed during the proprietary period. For, after Governor Bladen had expended more than the £4000, the house was not yet enclosed, and he estimated that another appropriation of £2000 currency would be required to complete the building. But as the lower house could not be prevailed upon to grant even enough to have it enclosed, it was left in a state of decay until after the overthrow of the proprietary government.[2]

[1] Sharpe's Correspondence, Vol. I, p. 433.

[2] L. H. J., May 16 to June 1, 1744; Sharpe's Correspondence, Vol. I, pp. 12, 56.

Nevertheless, although the attempt to build a governor's house failed, the Assembly made allowance to him for paying rent; and that allowance was increased from £45 currency in the year 1720 to £80 currency in the year 1756. But to exceed the latter amount, the lower house was less inclined than to refuse any allowance whatever.[1]

As chancellor, the governor must have received a considerable sum in fees. In 1754 Governor Sharpe received £226 currency for his service as his Majesty's surveyor general of the customs.[2] The lord proprietor, Frederick, considered the governor's income sufficiently large to request him to pay annually £200 toward the salary of Secretary Calvert.[3]

In all matters pertaining to the government, the chief support of the governor was the council of state. It appears that the relation of governor and council was designed to be analogous to that between the English king and his privy council. As already stated, it was the usual custom for the lord proprietor to appoint members of the council upon the recommendation of the governor. The governor was expected to advise with the council upon all important occasions, and seldom, if ever, to act contrary to its advice.

The members of the council were authorized to meet with the governor at such time and place as he should direct, and then and there deliberate and give advice on all matters brought before them. They were bound by oath to defend and maintain, at all times to the utmost of their power, the lord proprietor and his rights; to give good and faithful counsel to both lord proprietor and

[1] L. H. J., August 1, 1721, and May 1, 1756; Sharpe's Correspondence, Vol. III, p. 153.

[2] Portfolio 3, No. 30.

[3] Calvert Papers, No. 2, p. 120.

governor; never to accept any office pertaining to the government of the province that was derived from any other source than the lord proprietor; to endeavor to promote the peace and welfare of the people; to assist in the administration of justice; and, finally, to keep secret all the affairs of state.[1]

The size of the council was gradually increased from three in the year 1636 to nine in the year 1681; and after the establishment of the royal government, although the full council had twelve members, the usual number was nine or ten.

A councillor was seldom removed or even suspended, and vacancies were, therefore, seldom caused except by death or by resignation. Occasionally, a member served over twenty years. But the membership was usually very largely changed in the course of every ten years.

During the feudal period the amount of business transacted in the council was large. There was seldom a space as long as two months in which that board did not meet, and, when met, it often continued in session several days. The variety of its transactions was also large. Thus, in those days, at the council board, offices and courts were created, officers were commissioned and instructed, the oaths of officers were administered and fees were fixed and regulated, taxes were levied, petitions were heard, pardons were granted, advice was given with respect to calling, proroguing, and dissolving the Assembly, ordinances were issued with respect to the proprietor's territorial rights, the election of delegates, and expeditions against the Indians, and ordinances were likewise issued for the erection of local divisions, — such as hundreds and counties, — for the naturalization of foreigners, and forbidding the exportation of grain.

[1] Proceedings of the Council, 1636 to 1667, pp. 211–214.

But after the Revolution of 1689 scarcely an office was created, for the most of the time fees were fixed and regulated by act of assembly, taxes were levied only by a committee of the two houses of Assembly, the manner of electing and summoning delegates was wholly determined by act of assembly, counties were erected only by act of assembly, hundreds were erected only by orders of a county court, foreigners were naturalized only by acts of assembly, and before the middle of the eighteenth century the lower house successfully opposed the forbidding of the exportation of grain by an ordinance of the governor and council.

The business of the council was, therefore, far less in the eighteenth century than it was in the seventeenth. During an entire year in the eighteenth it sat for but few more days than it did in a single month in the seventeenth century. In the eighteenth century its business was largely confined to giving advice with respect to calling, proroguing, and dissolving the Assembly, to Indian questions, to the boundary dispute with the Penns, to the hearing of a few petitions, to the issuing of death warrants, and to the granting of pardons. The marked decrease in the business of the council and the corresponding increase in that of the General Assembly is a striking reflection of the change from monarchical toward popular government.

Just as the lord proprietor was the fountain head of all authority, and just as the governor was the representative of the lord proprietor, so, again, in the council, office and power were highly centralized. When in the year 1649 or the year 1650 the General Assembly became divided into an upper and a lower house, the governor and council — and after the year 1675 the council alone — constituted the upper house. The governor and mem-

bers of the council were the justices of the provincial court until near the time of the establishment of the royal government.[1] The governor then ceased to be a justice of that court, but a varying number of the council were continued in that capacity. Moreover, when, at the beginning of the royal government, the court of appeals was instituted, the governor and the members of the council were its justices. The members of the council were always justices of the peace. During the early, or feudal period, the secretary, the surveyor general, the members of the land council, — of whom the receiver general was one, — and some military officers were members of the council. Almost always, after the restoration of the proprietary government in 1715, the secretary, the commissary general, the attorney general, the agent, the judge or judges of the land office, one or both of the treasurers, the commissioners of the currency office, and the five naval officers were members of the council.[2] If the councillor had more offices than he could attend to, he appointed deputies. After the year 1676 the secretary always appointed the county clerks; and after the year 1717 the judge or judges of the land office appointed the register of that office.

During the feudal period the members of the council were usually large landholders. Thus, Thomas Cornwallis, the stalwart military commander, had, at one time, not much less than twenty thousand acres. Thomas Gerrard, William Stone, Philip Calvert, Baker Brooke, Henry Sewall, Giles Brent, John Lewger, James Neale, William Eltonhead, and Nathaniel Utie were all lords of manors, and each of the first five of them had five thousand acres or more.

Moreover, from the year 1670 until the Revolution of

[1] Proceedings of the Council, 1681 to 1685–86, pp. 431, 432.

[2] Portfolio 3, No. 30.

1689, many of the council were bound to the lord proprietor by the ties of kinship. For example, of the nine members in the year 1681, six were related to the lord proprietor as follows: Philip Calvert, uncle; Vincent Lowe, father-in-law; William Calvert and Henry Darnall, cousins; William Diggs and Benjamin Roger, step-sons.

From the year 1715 until after the year 1755 the members of the council had the reputation of being men of poor ability, and the records show that the transactions of that board during those years were exceedingly few. Strength was no longer derived, to any considerable extent, from the ties of kinship; and while able lawyers had by this time become leaders in the lower house, the lord proprietor continued to choose the members of the council from the county gentry rather than from among men of the best ability.[1] Then, too, the pay for service during that interval was so small as to be a poor encouragement.

In the year 1725 the members of the council were William Holland, Samuel Young, John Hall, Thomas Addison, Philemon Lloyd, Richard Tilghman, Matthew Tilghman Ward, James Bowles, and Benjamin Tasker. Three of them — Lloyd, Tilghman, and Ward — were near relatives; and at least seven of the nine were among the very largest landholders. These gentlemen seemed to feel much hurt when the lower house cast "invidious reflections" on them as enemies of the liberties of the people. When they, as members of the upper house, had made their weakness to appear in the controversies over officers' fees, English statutes, and pay for their own services, they allowed a bill to pass for the reduction of officers' fees about one-half. Then they asked the lord proprietor to reject that bill, advised him to make some concessions with respect to English statutes, and, in the same com-

[1] Calvert Papers, No. 2, p. 86.

munication, expressed no little anxiety about their own pay.[1]

In the year 1729 Governor Calvert, with respect to recommending for appointments to the council, wrote: "Such men as ought to be chosen are not easily got, and few men care for an empty honor attended with trouble, without some recompense. There are not places in the government sufficient for all, and the country refuse still to pay them for attendance when necessary."[2] Two years later the same governor is said to have expressed much concern at the want of courage the council had shown on several occasions.[3]

Governor Ogle took pains to have the most able men in the lower house appointed to the most lucrative offices, and, after that, relied on his own skill to manage the Assembly. The consequence was that during his administration only one or two men at all conspicuous for their ability were sworn into the council.

In the year 1755 Governor Sharpe wrote to Secretary Calvert the following: "If you knew how unaccustomed or how averse the present members (except perhaps Mr. Thomas) were to writing or communicating their thoughts to the lower house by message on any occasion, you would, I am persuaded, think with me that it is highly requisite the vacancies in his Lordship's council should be supplied with gentlemen of abilities who have been used to argue or write, and would be capable of supporting his Lordship's rights and prerogatives whenever a levelling house of burgesses should be inclined to attack them. You know, Sir, that few people will choose to engage in a dispute with those whose superior capacity they are sensible of."[4]

[1] U. H. J., November 5, 1725. [2] Calvert Papers, No. 2, p. 80.
[3] *Ibid.*, p. 81 *et seq.* [4] Sharpe's Correspondence, Vol. I, p. 180 *et seq.*

After this and a few similar representations, Sharpe succeeded in introducing into the council men of much greater talent, such, for example, as the Dulanys, the Bordleys, the Goldsboroughs, George Plater, and Daniel of St. Thomas Jenifer. The greatest of these was Daniel Dulany. His father had led the popular branch of the legislature to victory in its contest with the lord proprietor regarding the people's right to the English statutes. He had done much to encourage the settlement of Frederick County, and he was the most highly esteemed lawyer in the province.[1] The son, Daniel, was destined to outshine his father's talents. He was thoroughly educated in the mother country. He, like his father, chose the profession of the law. He became a member of the council in the year 1757. After the Stamp Act had been published, he produced the strongest arguments against it of any man on the American continent. This made him exceedingly popular, and even the lord proprietor saw fit to reward him still further for his services. He was advanced from the office of commissary general to the office of secretary. His brother Walter was sworn into the council, and appointed to the office of commissary general. His cousin, Benjamin Ogle, and his brother-in-law, William Fitzhugh, were also appointed members of the council. The office of secretary and the office of commissary general were the two most lucrative offices under that of the governor. The income from them in fees had been greatly increased by the inspection act of 1747, and by the large growth in population. The Dulanys were related to the most wealthy families in the province, such as the Bennetts, the Dorseys, the Lloyds, the Tilghmans and the Chews. Before the close of the proprietary period Daniel Dulany had no less than seventeen thousand acres

[1] Dulany Papers.

of land in Frederick County alone. Some other members of the council were very wealthy. Daniel of St. Thomas Jenifer, for example, who was the lord proprietor's agent and receiver general, left by his will, in the year 1790, more than £5000 currency besides a large amount of land, several slaves, and valuable plate. Still another member, Benedict Calvert, a cousin of the lord proprietor, held a no less lucrative post than that of a judge of the land office. Furthermore, the greatest of these officers were constituted a board of revenue, and given general supervision of the proprietor's territorial affairs.

Ability of the highest order had at last found its way into the council. But at the same time, as will be seen later, the showing of so much favor to one family, and the increased centralization of office, wealth, and power did not fail to arouse suspicion and discontent to such an extent as to test the strength of that ability beyond endurance.

How the council was supported previous to the year 1671 does not appear. But from that year until the establishment of the royal government, provision was made for its support by the act which imposed the export duty on tobacco of two shillings per hogshead. When its income from that source was terminated, provision was made for its support in two separate acts of 1692, — one, which appropriated the fourteen pence tonnage duty to the support of government, and another, which imposed a duty of fourpence per gallon on imported liquors. But the crown disallowed the tonnage act; and from 1694 until 1723 there was allowed in the public levy the itinerant charges and 150 pounds of tobacco for each day's service in council to every member of that board. However, as early as 1717, when the act for the support of government and for giving the equivalent for quit-rents and alienation fines

was first passed, the feeling arose that, as in 1671, so now, the council should be supported out of the duty appropriated for the maintenance of the government.[1] The controversy over English statutes sufficiently strengthened that feeling to cause the allowance to the council to be withheld from 1723 until 1736.

But before 1736 a large measure of quiet in the relations between the two houses had been restored, and the government doubtless felt that it was a little stronger. In that year, therefore, the upper house declared that it would agree to no public allowance whatever, unless its own allowance as a council was included therein.[2] The lower house yielded so far as to agree to the allowance for that year, and for eleven years thereafter that allowance was made. But from 1747 to 1756 no public claims were paid because the upper house would not agree to any public allowances unless the lower house would pass the appropriation demanded for the council. This time it was the upper house that finally yielded; and it is quite clear that the Assembly made no allowance to the council after the year 1747.

Nevertheless, in 1754, the average income of each member of the council from his several offices was about £372 currency.[3] According to reports of committees in the lower house, the fees of office in 1774 were at least fifty per cent greater in value than they were in 1754. The lord proprietor, Frederick, seems to have thought the income to some of the members of the council large enough to ask four of them to contribute, at first, £250, and later £400 each year toward the salary of Secretary Calvert.[4]

[1] L. H. J., July 24 and 28, 1716, and May 31, 1717.
[2] U. H. J., May 4, 1736.
[3] Portfolio 3, No. 30.
[4] Calvert Papers, No. 2, p. 120; Calvert Papers, No. 648.

It is, therefore, not so strange that the unsuccessful attempt, from 1770 to 1773, to reduce those fees, caused a tumultuous uprising among the people.

It is true that, from his point of view, the lord proprietor was authorized by his charter to create as many offices as he saw fit, to appoint any person to as many of those offices as he pleased, and, in each office, to allow whatever fees he chose as a reward for service. The old feudal idea of privilege to the official class also supported that view. On the other hand, the people as English subjects, who were proud of the control they had acquired over the official system, and especially over taxation for the support of government, considered themselves entitled by the same charter to share in every victory won by the House of Commons. When, therefore, the position of the House of Commons at the time when the charter was granted is contrasted with the position of that same body after the English Revolution of 1688, it will readily appear how natural it was for the lower house of the Maryland legislative Assembly to begin to resist the creation of new offices, to contend for some control over appointment, and to hold that, as fees were of the nature of taxes, it was entitled to a large measure of control in fixing the amount of those fees. Contention and resistance along this last line were strengthened and invigorated as the accumulation of offices in one person resulted in encouraging the sale of such offices as could not be administered by the first appointee. That contention and resistance was strengthened and invigorated as the purchasers of such offices, in order to make their purchases profitable, were induced to transgress the law in making all possible charges for fees. Lastly, that contention was strengthened and invigorated, and violence grew more threatening as, with the rapid increase in population, fees of office increased until the large office-holders —

members of the council — were enabled, through the income from their estates, as well as from their offices, to live in wealth, luxury, and social splendor in the fashionable city of Annapolis; while, at the same time, not only to the non-resident, pleasure-seeking lord proprietor was sent out of the province each year over £12,000 as territorial revenue, but also for his secretary's salary was sent out yearly £600 from the earnings of the five largest office-holders.

The creation of offices by the sole authority of the lord proprietor or his governor and council was very largely confined to the feudal period, and hence, also, to the time preceding the English Revolution of 1688. When the government was first organized it appears that there were appointed only the governor, two or three persons styled commissioners to advise and assist him, and a surveyor. In 1636, when a reorganization of the government was undertaken, one and the same commission continued Leonard Calvert as governor, appointed Jerome Hawley, Thomas Cornwallis, and John Lewger to constitute the council, and appointed John Lewger secretary, register of the land office, and receiver general. It further appears that by a separate commission Jerome Hawley was appointed treasurer. In 1642 the governor, the council, and Lewger each received a separate commission. At the time of the reorganization of the government, in 1636, the governor and council began the erection of such local institutions as hundreds and counties. Over the hundred, as well as over the county, the same authority appointed a military commander: over the hundred, a constable; and over the county, a sheriff and an increasing number of justices of the peace. Those justices of the peace with a clerk soon came to constitute the county court. In 1648 the first muster master general was appointed.

In 1638 John Lewger, who was already a member of the council, secretary, register of the land office, and receiver general, was made judge of probate by an act of assembly. It also appears that the same officer discharged the duties of surveyor general and attorney general. But in 1641 the office of surveyor general was separated from the secretary's office by the lord proprietor's appointment of a surveyor general; and in 1685 the office of examiner general was separated from that of the surveyor general. In 1650 or 1660 the office of attorney general was separated from the secretary's office by the appointment of an attorney general. In 1673 the office of judge of probate was separated from that of the secretary and united for a time with that of the chancellor. In 1676 the office of receiver general was separated from that of the secretary by the appointment of two receivers general. Finally, in 1680, the office of register of the land office was made distinct from that of the secretary.

Upon the establishment of the royal government, the office of commissary general, or judge of probate, was separated from that of the chancellor; and the office of naval officer — or collector of the customs duties which were levied by acts of assembly — and the office of treasurer were separated from each other and from that of the receiver general. Before the close of the seventeenth century two treasurers — one for each shore — had been appointed. By the middle of the eighteenth century the naval officers were five, — one for the lower Potomac, one for the upper Potomac, one for the Patuxent, one for Annapolis, and one for Oxford on the eastern shore.

From 1661 to the Revolution of 1689 the office of chancellor was separate from that of the governor. Such was also the case for a short time under the royal government

and, again, at the close of Governor Hart's administration. But at other times those two offices were held by the same person.

As early as 1669 it was a grievance of the lower house that offices were erected without any act of assembly for so doing.[1] One of the charges which the revolutionists of 1689 brought against the government was the creation, without act of assembly, of such new offices as those of the examiner general, attorney general, and clerk of the council.[2] With but one exception after the restoration of the proprietary government in 1715 no entirely new office was created without an act of assembly for that purpose. That exception was the creation of the office of examiner in chancery in the year 1734, and five years after its creation the lower house unanimously concurred in the report of its committee on grievances that the creation of that office without any law to support the same was an encroachment on the rights of British subjects.[3] For several years the creation of that office was numbered among the grievances, and the lord proprietor finally decided that it might be given up, if necessary, to restore quiet.[4] Although it was retained, the charter right according to which it had been erected was thereafter lost.

The attempt to interfere with the charter right of the lord proprietor to appoint to office was quite closely confined to the offices of sheriff and treasurer. Besides being a servant of the courts, the sheriff was the collector of the officers' fees, dues of the clergy, and whatever other taxes were from time to time levied directly on the people by act of assembly. He also had much to do at the election

[1] Proceedings and Acts of the General Assembly, 1666 to 1676, pp. 169, 176.

[2] Proceedings of the Council, 1687–88 to 1693, p. 219.

[3] L. H. J., July 23, 1740.

[4] Calvert Papers, No. 415.

of members to the lower house; and at one time the farmers of the proprietor's quit-rents were mostly sheriffs. The treasurers — one for each shore — were the officers to whom the sheriffs paid what was collected from the public levies and who accounted for the same to the Assembly.

As early as 1642 an act of assembly directed that the governor should appoint sheriffs from lists of persons nominated for that office by the provincial court and by each county court. An act of 1662 not only provided for similar nominations, but forbade any person to serve as sheriff longer than one year.

In 1669 the Assembly did not so interfere, for the upper house declared that the right to appoint sheriffs belonged solely to the lord proprietor, and that the Assembly ought not to meddle with it.[1]

But by 1678 the complaints against sheriffs had become so bitter that an act of assembly was passed that year to forbid any person from serving as sheriff longer than one year, unless at the end of that year he procured from one of the county courts a statement certifying to the just execution of his office. After that time a similar act was usually in force. Yet under the royal government there arose the complaint that, although an act of assembly forbade any one to serve as sheriff longer than three years, by "clandestine, secret, underhand practices the same person continued as sheriff in all respects but title for many years together."[2]

In 1724 the committee on grievances, after speaking of the general complaint of the people against the sheriffs, expressed the opinion that the sheriffs — by having the collection of all public dues and officers' fees as well as other duties rightly annexed to their office — had a much

[1] Proceedings and Acts of the General Assembly, 1666 to 1676, p. 197.
[2] U. H. J., July 1, 1714.

greater influence on the people than sheriffs or any other officers in England. That committee, therefore, proposed, as the most plausible means wherewith to remedy the evil and bring about a "just and tender" execution of the office, that sheriffs should be elected by the people. "And as the grant of that office," continued the committee, "is no advantage but a trouble to the person granting it, we hope it may be thought the rather conducive to the common satisfaction of prerogative and people."[1] But the upper house was wise enough to be of the opinion that the election of the sheriffs by the people would "prove a foundation for confusion and party animosities succeeded by oppression to those who appeared not to be of the prevailing candidate's party." Therefore, that house was in no way disposed to surrender such a branch of the lord proprietor's prerogative.

Such was the last attempt of the lower house to interfere in the appointment of sheriffs. Thereafter, in order to make that officer feel his responsibility to the people, the lower house freely resorted to the practice of calling before its bar any sheriff charged with neglect or oppression in the execution of his office; and if found guilty, as he usually was, that house imposed upon him whatever penalty it pleased.

In the year 1695 the lower house seems to have appointed the two public treasurers without any concurrence therein by the governor or the council. In the year 1713, when that matter was in dispute, the lower house contended that it alone had the right to appoint, to remove, and to direct in office those treasurers, and that the upper house could only concur or refuse to concur in their appointment.[2] The upper house conceded all this at that time, and there the question stood until the year

[1] L. H. J., October 23, 1724.

[2] *Ibid.*, November 2, 1713.

1736. But in that year, upon a vacancy occurring, the governor and the council held that the charter gave the right of appointing those officers to the lord proprietor, that the right had not been given away by any act of assembly, and, therefore, that the governor ought to make the appointment to fill the vacancy.[1] He accordingly did so. The lower house thereupon appointed a committee to ascertain what had been the previous practice.[2] But the treasurers had much less important duties to perform with respect to the public money than had the sheriffs, and the matter was consequently regarded as of such minor importance that the house paid little attention to the report of its committee.

In the year 1692, the council itself being involved in a quarrel with the secretary, Sir Thomas Lawrence, questioned his right to remove county clerks without sufficient cause.[3] But the secretary was sustained by the home government. In 1711, however, the lower house resolved that it was illegal for the secretary to remove any county clerk who was legally and duly qualified for that office.[4] Twenty years later, Governor Ogle, at the beginning of his administration, wrote as follows to the lord proprietor, "I am informed the right your secretary has of naming the clerks of counties at his pleasure has not only been disputed but carried against him, and for some time acquiesced in to the great lessening of your Lordship's power."[5] That right of the secretary was, however, recovered a little later and retained to the end of the proprietary government; but not without loud complaint

[1] C. R., October 23, 1736.

[2] L. H. J., May 23, 1737; see also L. H. J., June 3, 1748.

[3] Proceedings of the Council, 1687–88 to 1693, pp. 398, 399.

[4] L. H. J., November 2, 1711.

[5] Calvert Papers, No. 2, p. 83.

against the sale of those clerkships and against the secretary's receiving one-tenth of each clerk's income.[1]

It, therefore, appears that the encroachments made during the royal period upon the lord proprietor's right of appointment to office were discontinued and their effects removed some time after the proprietary government was restored. Yet a permanent act of assembly, passed in 1704, forbade any person to be appointed to office who had not resided in the province at least three years. Later, when bills were before the assembly for raising supplies to carry on war, the lower house insisted on enjoying the right to name the assessors as well as the commissioners who were to apply whatever was to be appropriated.

The outcome of the whole matter was, however, that the lord proprietor retained such a large control over appointment to the old offices that the legal remedy against the evils of centralization and sale in the official system was weak. In 1666, when the lower house was quite strong, legislation was had for preventing the clerkship of a county court from being held by a sheriff, and for making the office of coroner distinct from that of the sheriff. Early in the period of royal government an ineffectual movement was made to decentralize the official system. In 1709, and again in 1714, the committee on grievances made its complaint against the evils of one person holding many offices.[2] In 1740 the lower house held that, since the members of the council participated in legislation, they should be incapable of holding any office.[3] But these complaints and opinions availed little.

The natural consequence of the centralization of the official system was the sale of offices. During the royal

[1] L. H. J., May 14, 1750.

[2] U. H. J., November 2, 1709, and July 1, 1714. [3] *Ibid.*, May 17, 1740.

period complaint was raised against the sale of the sheriff's office.[1] Grievous complaints were raised against the sale of the clerkships before 1711, and from 1739 to the close of the proprietary period. Then, from 1751, the office of governor was saddled with £200 per annum; the office of secretary at first with £50, but later with £200; the office of commissary general with £100; and those of the two judges of the land office with £50 each. From 1720 to 1774 bills to prevent the sale of offices on several occasions passed the lower house. In 1769 that house, in a list of grievances which it sent to the lord proprietor, declared, "The sale of offices, now open and avowed, obliges the purchaser, by every way and means in his power, to enhance his fees; this is contrary to law and leads directly to oppression."[2]

But although the lord proprietor retained the right of appointment, and although the sale of offices was not prohibited, yet the consciousness that offices were bought and sold as an article of merchandise could not have failed to strengthen the efforts of the lower house to control the amount of fees. As early as the year 1639 some fees were regulated by act of assembly. Previous to the Revolution of 1689, however, fees were for the most part fixed and regulated by the lord proprietor, or by the governor and council. They were fixed and regulated by the same authority from the year 1733 to the year 1747, and after the year 1770. But at other times — except from December, 1725, until 1733, when they were subject to no regulation — they were fixed and regulated by act of assembly.

In 1704 and in 1714 the lower house made unsuccessful attempts to reduce the amount of fees. In 1719 that house succeeded in having them reduced about one-fourth. In 1724 and 1725 an unsuccessful attempt was made to

[1] L. H. J., November 2, 1709. [2] *Ibid.*, December 20, 1769.

reduce them one-half. In 1747, when the inspection act was passed, the nominal reduction of them was one-fifth. Finally, in 1770, the unsuccessful attempt of the lower house to make another reduction caused the governor to issue a proclamation for their regulation as fixed in the act of assembly, which had just been suffered to expire; and that proclamation was the occasion of tumultuous uprising in several of the counties. For example, the *Gazette* gave the following account of the treatment the proclamation received in Frederick County at the close of an election of delegates to the lower house: "The proclamation was read and unanimously declared to be illegal, unconstitutional, and oppressive; and sentenced to be carried to the gallows, and hanged thereon, and afterwards to be buried face downwards, that by every ineffectual struggle it might descend still deeper in obscurity.

"The proclamation was then put in a coffin provided for the purpose, and carried to the place of execution, attended by a concourse of at least one thousand people, who moved in slow and regular order, attended with drums, fifes, and bagpipes, playing slow music suitable to the occasion. The sentence was executed to the universal satisfaction and joy of the spectators, under a general discharge of small arms."[1]

That time of general uprising also provoked such severe criticism upon the whole official system as the following: "When the members of the upper house hold their seats for life, and not for pleasure, and hold no lucrative offices under the government; when the same gentlemen are not members of the upper house, counsellors, and judges in the provincial court and court of appeals; when the judges of our supreme court hold their commissions dur-

[1] *Maryland Gazette*, May 27, 1773.

ing good behavior, and are declared incapable of holding any place from government but their judicial stations, the income of which to be liberal; when the office of chancellor is separated from the office of governor; when a law can be obtained to prevent the sale of offices; when the interests of the governors and the governed are inseparable; when the good of the people is the object of government; when the law of the land is the rule of conduct, and not illegal proclamations—then will government be respected and supported; then will the governor be considered to be the friend of the people over whom he presides; then will the gentlemen of the council be thought to act and advise according to their opinion with honor and integrity; then will the upper house be deemed independent of government, and not perverted by the influence of interest and bias of office; then will it no longer be deemed infamous to hold an office of profit under government."[1]

[1] *Maryland Gazette*, October 28, 1773.

CHAPTER II

THE LEGISLATURE

The Assembly of the Palatinate of Durham was composed of the ordinary freeholders and the bishop's council. The members of that council were the members of the bishop's household, the officers of the Palatinate, and certain other persons. The council and the other freeholders were accustomed to sit as one body in the capacity of a court of law as well as a legislative Assembly.

As a legislative Assembly, its greatest activity was directed to the subject of taxation. No impost proposed by the bishop could be collected without the assent of the Assembly, which also enjoyed the right of self-taxation on its own initiative for its own ends. But further than this the legislative functions did not extend; and those very limited functions were kept all the more rudimentary because the bishop was ordinarily able to "live of his own." They were kept confined to taxation because acts of parliament regularly extended to the Palatinate; and because in case of the need of any special or local regulation, action was taken by the council and not by the Assembly.[1]

Distance from the seat of the home government and an environment so unlike that in Durham, or in any other part of the mother country, favored a far different development within the province of Maryland. In the charter was expressed the wish of the crown that the lord pro-

[1] Lapsley, "County Palatine of Durham."

prietor would assemble the freemen or their delegates for the framing of laws as often as need should require. But it was clearly implied that ordinarily the lord proprietor might be the judge with respect to the existence of such a need; and the right to determine the form or manner of calling an Assembly was expressly granted to the lord proprietor.

The first Assembly was convened eleven months after the landing of the first colonists. But little is known of that Assembly except that some acts passed by it failed to receive the lord proprietor's assent. Nearly two years later, when the second Assembly was called, the governor issued personal writs of summons to the members of the council and a few others. Some of those thus summoned in person, such as commanders of hundreds, were directed to encourage the attendance of such persons as they saw fit, and to give all other freemen of the hundred the privilege to attend in person or to choose delegates.[1] The result of issuing such writs was not that delegates were publicly elected, but that many made private choice of a proxy. So that when the most important question of the session was put to a vote, nineteen persons cast sixty-nine votes.[2] The consequence was that a complaint arose that the governor and the secretary, being proxies for so many, controlled the Assembly.[3]

Less than one year later, December, 1638, writs of election were issued, preparatory to calling the third Assembly, to each of the hundreds and to one manor. The writ sent to the hundreds directed that two or more delegates should be chosen, but the writ to the manor did not state the number. Personal writs of summons were also issued to each member of the council and to three

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, p. 1.
[2] *Ibid.*, p. 11. [3] Calvert Papers, No. 1, p. 160.

other gentlemen.[1] When this third Assembly had met there were present the governor, five persons who had received a personal summons, two delegates from each of four hundreds, and one delegate from a manor.

Each of the two acts passed by that Assembly supported the manner in which it had been elected and called. But from 1641 to 1650 the disquietude in the province, resulting from the civil commotion in the mother country, caused the governor again to assemble the freemen in person, by delegates or by proxies; and that the directing how the Assembly should be constituted was still claimed by the lord proprietor as his sole right, appeared after a protest had been made in the year 1647 against the right of the governor to continue as a legal Assembly one which had been regarded as a rebel Assembly.[2] But in the year 1650, after the governor had given the freemen the opportunity to assemble in person, by proxy, or to elect delegates, each of the hundreds elected from one to three delegates. Ever after that the representative method of election was followed.

The establishment even by custom of a system of representation — which in no form whatever seems to have been known in the Palatinate of Durham — was an important step toward organizing the legislative power of the people. But so long as the governor continued his early practice of summoning by personal writs an indefinite number of gentlemen to sit with the people's representatives, it might have been easy for him to control legislation. In 1642, however, the delegates took their first step to remove any advantage the governor might secure from such a privilege by requesting that the Assembly be divided into two houses, of which the people's

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, pp. 27, 28.

[2] *Ibid.*, p. 266.

representatives should constitute one, and have the right to give its negative to any legislative measure.[1] Though Governor Calvert refused to grant the request, Governor Stone seems to have yielded the point in 1649. At any rate, in 1650, the two houses were established by act of assembly; and ever after that the bicameral system was continued, except during the short period of government by the Puritan commissioners. This was another advance in organization beyond that of the Assembly in the Palatinate of Durham. Henceforth the upper house was to stand for the rights and interests of the lord proprietor, while the lower house stood for the rights and interests of the people. No law could be made or repealed without the consent of both houses, of the governor and the lord proprietor. The contest between the elements of monarchical government on the one side, and those of popular government on the other, was thereafter, in a large measure, fought out by the two houses, although both the governor and the lord proprietor occasionally became more or less fiercely engaged therein.

Of the upper house little need be said in this connection, since the last chapter was so largely devoted to it as an executive body. Although in the year 1675 the lord proprietor authorized the governor to summon to the upper house, besides the members of the council, a number of lords of manors not exceeding seven,[2] and although in the year 1721 Governor Charles Calvert was in doubt about the right of a person suspended from the council to retain his seat in the upper house,[3] it is probable that from the time of the division of the Assembly into two

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, p. 130.

[2] Proceedings of the Council, 1671 to 1681, p. 10.

[3] L. H. J., February 20, 1721.

houses none sat in the upper house except the governor and council, and after the year 1675 the governor was not considered a member of that body.[1]

This house was therefore small and required little organizing. The president of the council was of course the presiding officer after the governor ceased to be a member. The clerk of the council was the clerk of the upper house. It had no standing committees and, except when some of its members were appointed to serve on a joint committee of the two houses or to join in a conference with some of the members of the lower house, it seems seldom to have done business other than as an entire body. The important things to be borne in mind with respect to it are that it was composed of the flower of the office-holding class; that every member was kept dependent on the lord proprietor by being permitted to hold none of his government positions except during his pleasure; and that through its advice given to the governor that house might exercise a strong control over the calling, proroguing, and dissolving of the Assembly.

In the early years when proxies were chosen, all freemen, as well as freeholders, were not only entitled to a seat in the Assembly, but the Assembly voted to impose a fine of twenty pounds of tobacco upon any who neglected to attend in person or by proxy.[2] For several years after it had become the custom to elect delegates, the only qualifications prescribed were that voters should be freemen and that delegates should be discreet freemen.[3] Such a practice gave to some small property

[1] Proceedings of the Council, 1671 to 1681, p. 10; also, U. H. J., October 25, 1725.

[2] Proceedings and Acts of the General Assembly, 1637–38 to 1664, p. 6.

[3] *Ibid.*, p. 425.

holders greater political privileges than those of the same class enjoyed in the mother country.

But in the year 1666 the feeling between the upper house and the newly elected members of the lower house became bitterly hostile. Another meeting of the Assembly was not called until after the next election, three years later. That election proved to be in no way favorable to the lord proprietor or his government; and when those delegates met in the session of the year 1669, their unfriendly feeling was augmented by the lord proprietor's disallowance of several acts of assembly that had been passed three years before. Moreover, resistance was urged by Charles Nicholett, a clergyman, whom some of the members had asked to stir up the whole house to its duty. In a sermon to that body he requested the members to beware of the "sin of permission," stated that never before had so much been expected from a lower house as from the one he was addressing, and strongly recommended that they should follow the House of Commons as their example.[1] Instead of granting the lord proprietor a subsidy for the support of government and as a recompense for the heavy expense he had incurred in founding the colony, the delegates presented a list of grievances, complained of heavy taxation, and gave the governor for but one year an export duty on tobacco of only sixpence per hogshead. As a consequence, that Assembly never met again; and when writs of election were issued, in December, 1670, suffrage was restricted to such freemen as had a freehold of at least fifty acres, or a visible estate of £40 sterling. The same qualifications were also prescribed for delegates.[2] At that

[1] Proceedings and Acts of the General Assembly, 1666 to 1676, p. 159.

[2] Proceedings of the Council, 1667 to 1687–88, p. 77 *et seq.*

time, too, the city of St. Mary's was given its first representation in the Assembly, and its delegates were chosen by its mayor, recorder, aldermen, and common council, all of them creatures of the governor.

Such restriction of the suffrage was the occasion of one of the charges made against the government at the time of the threatened rebellion of 1676.[1] Yet, although the opposition of the lower house had become quite active again by the year 1678, no complaint appears to have been made by that body against the restriction of suffrage. An act of assembly passed that year provided for the continuance of the restriction, while it also disqualified sheriffs and innkeepers from being elected delegates. That act was disallowed by the lord proprietor because of another provision which it contained.[2] But from the beginning of the royal government the qualifications provided by the act of 1678 became a law, and thereafter but slight changes were made in the qualifications of either voters or delegates until 1776. However, from the beginning of the royal government Catholics were disfranchised; and in the year 1708, when Annapolis was incorporated as a city in the place of St. Mary's, the qualifications of voters for the two city delegates were changed. The charter of the new city at first conferred the suffrage only on the mayor, recorder, aldermen, and common council, as had been done in the case of St. Mary's. But immediately after those magistrates had been sworn into office, they, with other inhabitants, petitioned the governor to extend the suffrage so as to include all freeholders; that is, all who owned a house and lot within the city, all residents having a visible estate of the value of £20 sterling, and all persons who, after having served five years to any trade within the

[1] Proceedings of the Council, 1671 to 1681, p. 138.

[2] *Ibid.*, p. 378.

city, should become housekeepers and inhabitants. This petition was granted.[1] Again, in the year 1715, residence within the county was coupled with the requirement as to the possession of personal property; while compulsory voting was resorted to by the imposition of a fine of one hundred pounds of tobacco upon any qualified elector who failed to appear at an election.

As already observed, the local unit of representation was at first the hundred. But in 1654, the year in which the proprietary government was temporarily superseded by the Puritan commissioners, that unit of representation was changed from the hundred to the county. After the restoration of the proprietary government in 1658, representation by counties was continued, while from 1671, as noticed above, one city also was represented.

The writs of election issued during Governor Fendall's administration directed that four delegates should be chosen in each county. Those issued in the time of Governor Philip Calvert left it to each sheriff to cause the election of as many delegates as he saw fit. Those issued at the beginning of the administration of Governor Charles Calvert permitted the freemen to choose any number from one to four. But in 1670 the writ which restricted the suffrage directed that four delegates should be elected in each county;[2] at the same time, in calling the first Assembly after an election under the new suffrage regulation, the governor began the practice of summoning only a part of those who were elected. The saving of expense was assigned as the reason for not summoning all.[3] It is not strange that such a reason did not satisfy. In 1676,

[1] Chancery Records.

[2] Proceedings of the Council, 1667 to 1687–88, p. 77.

[3] Proceedings and Acts of the General Assembly, 1666 to 1676, p. 241.

after only two of the four delegates from each county had been summoned, the lord proprietor was presented with a petition from delegates and other citizens, praying that thereafter a fixed number should be elected, that all who were elected should be summoned, and that, in case of a vacancy, a writ should be issued to fill the same by a new election.[1] As this was the time of Bacon's Rebellion in Virginia, and a time also when a similar uprising was threatening in Maryland, the lord proprietor agreed to comply with the request, but declared that thereafter he would exact of every delegate an oath of fidelity to himself.[2]

Accordingly, at the next session of Assembly, held in the year 1678, four newly elected delegates were summoned from each county. At that session, an act was passed not only requiring the election of four delegates from each county and two from the city of St. Mary's, but also obliging all that were elected to attend each session without waiting for a writ of summons. Another session of Assembly was not held until nearly three years later, and the proclamation by which it was called contained the lord proprietor's veto of the act of 1678, and also a declaration that after the next dissolution only two delegates should be elected.[3] Then, too, although the lord proprietor must have known that there would be twelve vacancies among the forty-two seats in the lower house, no action was taken to fill these. The failure to do so was a failure to keep his promise made in 1676, in reply to the petition of that year. As a consequence, from the time of issuing the proclamation to that of the meeting of the Assembly, there was much talk among the

[1] Proceedings and Acts of the General Assembly, 1666 to 1676, pp. 507, 508.

[2] *Ibid.*, p. 508.

[3] Proceedings of the Council, 1671 to 1681, p. 378 *et seq.*

people that there could be no Assembly without a new election to make a full house. Three days after the opening of the session, the delegates presented the lord proprietor with an address in which they stated that they conceived their house "greatly incapacitated to act," and that they had unanimously resolved that their speaker ought to issue out warrants for filling the vacancies according to the practice of the House of Commons.[1] They prayed that the lord proprietor would appoint and constitute some officer to whom the speaker might direct such warrants. But both the lord proprietor and the upper house feared lest, by having the vacancies filled, a precedent might be established for making four delegates from each county necessary to constitute a lower house. Hence that body was a second time called before the upper house and urged to proceed to business. But for several days it seems to have proceeded to no other business than to frame a bill to provide that two delegates should be elected in each county, and that when there was a vacancy the speaker should direct his warrant to the secretary to issue a writ for an election to fill the same. During the contest over that bill, the lower house claimed that it was entitled to all the privileges of the House of Commons, whereas the upper house likened the inhabitants of Maryland to a conquered people.[2] The bill was not passed. But no other business was taken up until after the lord proprietor had instructed the secretary to issue writs for filling the eleven vacancies, so that each county should have its four representatives. It should, however, be stated that, although he ordered the writs to be issued, he declared that thereafter only two delegates

[1] Proceedings and Acts of the General Assembly, 1678 to 1683, pp. 114, 115.

[2] *Ibid.*, pp. 123–127.

should be elected from each county;[1] and when an election was held the next year, his will in that particular was executed.

The lord proprietor had also been charged with abusing his privilege of appointing sheriffs to control elections. The summoning of only a select part of the delegates looked too much like taking undue advantage of his charter right, while his neglect to fill vacancies was, to say the least, not according to English usage. It was also thought to be clear that the lord proprietor could not be left to enjoy all his charter rights as he saw fit without violating those provisions in the charter which guaranteed to the inhabitants of Maryland the privileges of English subjects. So, although the people of each county had complied with the writ for the election of only two delegates, they instructed those delegates to seek to have the former number restored. The lower house, accordingly, asked the lord proprietor to agree to an act of assembly for providing that thereafter writs should be issued for electing two, three, or four delegates from each county, at the choice of the freemen.[2] They, however, asked in vain; for the concluding part of the lord proprietor's answer was as follows: "I think your late request is of that nature that it will as well be inconvenient for the free men to accept as it may be dangerous for me to grant. What privileges and powers I have by my charter are from the King, and that of calling assemblies in such manner and way as I shall think fit, being an undeniable one amongst the rest, I cannot deem it honorable nor safe to lodge it in the freemen as you have desired, for it would be as reasonable for me to give away my power of calling and dissolving of assemblies as to give that of choosing the number of dele-

[1] Proceedings and Acts of the General Assembly, 1678 to 1683, pp. 133, 134.

[2] *Ibid.*, p. 407.

gates. . . . Therefore, I hope you will not hence forward press anything of this nature to me, being resolved never to part with powers my charter gives me, but always to exercise them for the ease and welfare of the freemen under my care, and by so doing I shall ever be left able to render a good account of my great charge here to my Sovereign Lord the King, by whose grace, favor, and goodness I enjoy all I have. And so I rest.

"Your very loving friend,

"C. BALTIMORE." [1]

In the face of such a reply the lower house continued its efforts to get the desired bill passed, and sought to accomplish its end by withholding some of the lord proprietor's favorite bills. But whenever affairs arrived at such a status, the proprietor called the delegates before him in the upper house, and there prevailed upon them to yield.[2] In this way he for a time retained that right, but in so doing he added to the causes of the Revolution which soon followed, and which ended in depriving him of all right to govern. The first Assembly under the royal government easily passed an act prescribing a form of writ which directed the election of four delegates, and that number remained unchanged until the Revolution of 1776. From the beginning of the royal government, also, the speaker enjoyed the privilege of directing his warrant to the secretary to issue writs for filling vacancies, although it was not until 1718 that provision was made for this by legislative enactment. The right of determining the number of delegates — all of whom had to do service in assembly — and of control over the filling of vacancies, like that of

[1] Proceedings and Acts of the General Assembly, 1678 to 1683, p. 416.

[2] *Ibid.*, p. 491 *et seq.*

fixing the qualifications of voters and delegates, when once possessed by the legislative Assembly, was never lost.

From 1666 to 1669, from 1671 to 1674, and from 1681 to 1684 there was no session of assembly. Except during these intervals, all of which fall within the administration of the first Charles Calvert, either as governor or as lord proprietor, there were very few years of proprietary government in which there was not at least one session of assembly. In the early years of the province there was frequent cause for calling it, and after the establishment of the royal government annual assemblies came to be looked upon as the rule. So it happened that, from the restoration of the proprietary government in 1715 until 1775, there were only three years — 1743, 1764, and 1767 — in which the Assembly did not meet. It was because of the great disquietude, and the opposition to the government at the time, that the lord proprietor ordered no assembly to be called in 1743. Although his order was obeyed, Secretary Jennings, with good reason, wrote that he doubted the expediency of breaking through the common rule at such a juncture.[1] The small-pox kept the Assembly from meeting in 1764, while the reason why it did not meet in 1767 does not appear.

Again, with the exception of the years from 1671 to 1676 and from 1676 to 1681, — during the administration of Charles Calvert, — there never was a time under the proprietary government in which there was not an election of delegates within intervals of about three years or less. Prorogations before the Assembly had completed its business were rare — the most important ones of that nature being in 1739 and 1770. Finally, the anti-government party was almost invariably so strong that the governor seldom saw anything to be gained from a dissolution before the end of the three-year term.

[1] Gilmore Papers.

Therefore, although the lord proprietor always retained, in form, his charter right to convene, prorogue, or dissolve the Assembly when he saw fit, it seems probable that he was permitted to do so only because he followed very closely the custom in vogue in the mother country, and seldom used those rights for the sole purpose of defeating the popular will. At any rate, the people were by no means indifferent with respect to the use he made of the rights. In 1642, as a consequence of the movement that was then in progress in the mother country, protests were made against the lord proprietor's right to prorogue the Assembly.[1] In 1654, under the government of the Puritan commissioners, a law was made to require the calling of an assembly once every three years or oftener. In 1697, under the royal government, Governor Nicholson likened the General Assembly to the English Parliament, and stated that since a statute prohibited the continuance of one Parliament longer than three years, he thought best to dissolve the Maryland Assembly when it had continued about that length of time.[2] He, accordingly, dissolved it, and thereby a precedent was established which was ever after followed until 1776.

One of the most effective ways which the lower house had of asserting its power, was to call before it any minor officer against whom a public charge was brought, and, if found guilty, reprimand, fine, and even imprison him. But if he were imprisoned, the governor could cause him to be released by proroguing the Assembly. Frequent prorogations for that purpose could not have failed to provoke a lively controversy. It, however, seems to have happened but twice. The first time, in 1739, it was rather quietly passed over. But after it had been repeated in

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, pp. 117, 180.

[2] L. H. J., June 11, 1697.

1770, the lower house expressed its sentiment to the governor as follows: "When we view as its effects, a considerable charge to the province; a total stagnation of business for several days; bills of importance before both houses unfinished, that must be taken up anew; the journals of accounts lying before the upper house; the petitions of many people defeated, or with expense and difficulty renewed; an inquiry into grievances of others stopped, and parties laid under the necessity either of attending a heavy expense or going away unheard; a public officer released, and public justice evaded; we cannot but complain of the prorogation as an undue and ill-advised exertion of power; that power with which your Excellency, as supreme magistrate, is constitutionally invested for the good of the people."[1] The closing words well illustrate how it had come to pass that the lord proprietor was to enjoy what was left to him of his original charter right of calling an assembly of freemen — in whatever manner seemed best to him, and as often as need should require — only on condition that he used that right for the good of the people, the people themselves being judges.

Still further, until the Revolution of 1689, the lord proprietor retained for himself the sole right of determining the manner of conducting elections and of making election returns. Up to that time the writ of election, which was issued to the sheriff, simply commanded that officer to proclaim, as soon as convenient, to the qualified electors of his county, that an election was to be held at a date named by the sheriff. Then, at the appointed time, he was to hold the election and make return thereof to the secretary's office not later than a day named in the writ.[2] But

[1] L. H. J., November 8, 1770.

[2] Proceedings and Acts of the General Assembly, 1637–38 to 1664, pp. 381, 425; Proceedings of the Council, 1667 to 1687–88, pp. 77, 78.

as early as 1666 a sheriff, who also held the office of county clerk, was charged with proceeding with an election contrary to the writ.[1] In 1669 a sheriff caused the election of two delegates, and then made return of the election of but one.[2] And at the time of the threatened rebellion of 1676 a complaint of general nature was made concerning the lack of freedom in elections.[3]

A committee on privileges and elections first appeared in the lower house in 1678.[4] That same year the Assembly passed an act in the preamble of which the opinion was expressed that the safest and best rule for the province to follow in choosing delegates was the precedents of the English Parliament, and that they should be conformed to as nearly as the constitution of Maryland would permit. The act, accordingly, required that immediately after the receipt of the writ, the sheriff should call a session of the county court, and during its session proclaim, or cause to be proclaimed, to the qualified electors of his county that there was to be an election of delegates at the next session of the county court, which was to be held within a reasonable time after the notice. After the election the sheriff should make return thereof to both the lord proprietor and the chancellor. These returns should state the time and the place of the election, and contain the names of the persons chosen and the signature of each voter. A penalty of one hundred pounds sterling should be imposed on any sheriff who neglected his duty with respect to holding the election or making returns. Finally, provision was made for the choice of two delegates by the mayor, recorder, aldermen, and common council of the

[1] Proceedings and Acts of the General Assembly, 1666 to 1676, p. 74.
[2] *Ibid.*, p. 187.
[3] Proceedings of the Council, 1667 to 1687–88, p. 149.
[4] Proceedings and Acts of the General Assembly, 1678 to 1683, p. 6.

city of St. Mary's. The lord proprietor disallowed this act before an election was held under it.[1] But after 1689 one of the charges was the violation of the freedom of elections ;[2] and at the beginning of the royal government requirements similar to those of the act of 1678 became law, and with but slight modifications and additions remained in force until 1776. The principal additions were made in 1715, when it was required that writs should be issued at least forty days before the meeting of the Assembly, and that the election should not be held within less than ten days from the time the sheriff gave notice of it. From that year, also, the sheriff was required to prepare for each delegate two indentures, each "having thereunto the sheriff's hand and seal, and the hands and seals of the several electors by them subscribed." One of those indentures the sheriff was to transmit to the chancellor, while the other he was to keep for his own justification.

Ever after the establishment of the royal government, the lower house was active in asserting its control over both the sheriff and the manner of conducting elections. Its committee on privileges and elections always made its report some time during the first session after an election. In that report an election was not infrequently judged as undue. When it had been so declared by a vote of the whole house, the speaker issued his warrant to the secretary for a new election. Moreover, when such undue election was ascribed to the negligence of a sheriff, that sheriff was called before the house to answer for the same. In 1735, the house, by a majority of only one, resolved that it should not necessarily be conclusive evidence that a person was entitled to vote merely because he swore that he

[1] Proceedings of the Council, 1671 to 1681, p. 378.
[2] *Ibid.*, 1687–88 to 1693, p. 215.

possessed the visible personal estate required by law to qualify him as an elector.[1]

In 1732 an act of assembly, to prevent bribery and corruption in elections in the city of Annapolis, required every elector to take an oath that he had not been bribed. The same act declared that any one found guilty of perjury, by reason of the oath prescribed, should, in addition to the usual penalty for perjury, be allowed neither to vote at any future election nor to be chosen a delegate. But the lord proprietor disallowed this act. Again, in 1745, a bill in the lower house, for the better regulation of elections, failed to become a law. In 1749 the lower house resolved that it was "a high infringement of and a dangerous attack upon the liberties of the freemen" of the province for a member of the upper house to interest, intermeddle, or concern himself in an election of delegates.[2] Four years later that house passed the following resolutions: "Resolved unanimously that all the statutes of England made for the security, confirmation, or advancement of the rights, liberties, and privileges of the British subjects for the prevention and detection of bribery and corruption and the maintenance and preservation of freedom in elections, the direction, regulation of returning officers in their duty, and the qualification of electors, except in such cases wherein sufficient provision hath been or shall be established by acts of assembly, have the force of laws within this province and as such ought uniformly and inviolably to be received and observed."

"Resolved that it is and hath been a duty incumbent on every elector of a delegate or burgess to serve in assembly for this province to take the oath of an elector prescribed to be taken by the statute second of George

[1] L. H. J., April 3, 1735. [2] *Ibid.*, June 10, 1794.

the second, Chapter XXIV, before he is admitted to vote or be polled at any election if required as is directed by the said statute."[1] Finally, in 1768, it was resolved that in every case in which it should be found that there had been treating — the smallness or greatness of the treat not to be considered — from the time of the issue of the election writ until after the closing of the polls the election would be declared void.[2]

From very early times the people took a lively interest in the elections; but it was not until the middle of the eighteenth century that such interest became decidedly intense. Party spirit existed; but it was not so much the government party against the anti-government party as it was the radicals against the moderates, or the lawyers against the merchants. There is no direct proof that the candidates were ever nominated in caucus; and yet the fierce election contest in Baltimore County in the year 1752, in which each party had its four candidates, and a few similar cases, indicate that there was sufficient organization in some of the counties for a caucus.[3] It is also clear that by the year 1750 elections were preceded by much loud and enthusiastic electioneering. Although the law left the sheriff wide discretion as to the manner in which he might conduct an election, in practice that officer was to a considerable degree subject to the direction of the candidates. The voting took place in the courthouse, where one or two sworn clerks recorded the vote of each elector as it was given *viva voce*. If the crowd was too great, only a few at a time were admitted into the building.[4] The polls were usually kept open only a day or

[1] L. H. J., October 18, 1753.

[2] *Maryland Gazette*, June 30, 1768.

[3] *Ibid.*, February 13, and March 5, 1752.

[4] *Ibid.*, February 13, 1752.

two; but if any of the candidates could show cause, they were kept open for an entire week.

Until the close of the seventeenth century, the governor and the upper house occasionally declared with effect that a certain delegate was disqualified to sit in the lower house.[1] But ever after the beginning of the eighteenth century, the lower house was the sole judge of the elections, returns, and qualifications of its own members. In the year 1722 it resolved that thereafter any delegate who accepted an office or pension from or under the government, should be incapable of sitting longer as one of its members;[2] and in the year 1734, by a vote of thirty-seven to four, that body expelled four of its members for accepting office.[3] However, after it had done so, the governor called it before him in the upper house and told its members that no law of the province had disqualified the persons in question, charged them with attempting to give their own resolution a force equal to an act of the whole assembly, and of thereby "assuming a power entirely independent and indeed destructive of the other parts of the legislature and of the liberties and properties of his Majesty's subjects."[4] He then dissolved the Assembly; and although three of the four who had been expelled were reëlected, so, also, were nearly all of the other old members returned.

In 1750 another expulsion of two members for the same reason was not followed by an immediate dissolution;[5] and from that year until 1774 the lower house never wearied of sending to the upper house a bill for preserving the independence of the former by providing that no one should accept an office while he was a member

[1] Proceedings and Acts of the General Assembly, 1678 to 1683, p. 115 *et seq.* [2] L. H. J., October 29, 1722. [3] *Ibid.*, March 25, 1734.
[4] *Ibid.*, March 25, 1734. [5] *Ibid.*, May 8 and 9, 1750; also June 20, 1746.

of the lower house, or for a certain number of years after he ceased to be a member, and that no one who already held an office should be qualified to become a member. The office of justice of a county court, however, seems to have been made an exception in that bill. The upper house paid little attention to the bill, until 1774, when it gave the members of the lower house an opportunity to show the type of their patriotism by passing the bill with a few amendments, the chief of which required that members of both houses should give their service in assembly free of all charge, and that all who were elected delegates, should, at the time of taking their usual oaths to the government, take also the following oath: "I, A. B., do solemnly swear that I have made use of no means directly or indirectly to deceive any elector in order or with the intent or design to obtain or procure his vote either for myself or any other person and that while I shall serve as a delegate or deputy in the General Assembly of this province, I will truly and faithfully, upon all occasions, consent and agree to the passing, ordaining, and enacting of all such resolves, regulations, and laws as I shall believe in my conscience to be just and conducive to the peace, real welfare, and prosperity of this province without any other regard or view whatsoever, and that I will oppose and dissent from all resolves, regulations, and laws which shall be proposed by any person, and which I shall believe in my conscience to be unjust or not conducive to the peace, real welfare, and prosperity of this province, and that I will not in any manner directly or indirectly misrepresent my own conduct or views as a delegate or deputy, or the conduct or views of any other delegate or deputy in the general assembly in order to gain the vote of any elector for myself or any other person or to persuade or incline any elector, not to give his vote for

any person who shall or may be a candidate at any election."[1] It is perhaps unnecessary to add that the bill as thus amended was not again heard from, and that it was well an opportunity was then so close at hand for all to direct their patriotic emotions in another channel.

Previous to the Revolution of 1689 there was a marked dearth of parliamentary skill on the side of the opposition in the lower house. Although on some occasions messages were boldly and plainly worded, they were wanting in persuasive and convincing force. The entire bearing of the opposition was of the nature of the sturdy planter or farmer rather than of the skilled parliamentarian. It was a body with but a very limited knowledge of English law and without able leadership. Then, too, as already observed, during the administration of the first Charles Calvert, the opposition was weakened as well as the supporters of the government strengthened by his interference in elections. In 1672 he wrote to the lord proprietor as follows: "Mr. Notley is now chosen speaker of our assembly, he and Mr. John Morecroft being chosen burgesses from the city of St. Mary's, and by that means I got him into the assembly. Though Dr. Wharton be a good understanding man, yet Dr. Morecroft is much better to our purpose, being the best lawyer in the country, and has always been (upon other assemblies) a great asserter of your Lordship's charter and the rights and privileges thereof. I durst not put it to an election in the counties, but took this way which I knew would certainly do what I desired. And now I have got Mr. Notley into the chair, I have assured him that with your Lordship's leave I am resolved to keep him there as long as he and I live together."[2] Furthermore, at almost every election during that early period less than twenty-five per cent of

[1] U. H. J., April 16, 1764.

[2] Calvert Papers, No. 1, p. 264.

the old members was reëlected. Consequently, advances toward greater parliamentary skill and able leadership were slow.

But during the period of the royal government several able lawyers made their appearance in the province. When they had found their way into the lower house, the once stiff blunt message slowly began to give way to one that was more logical, graceful, and fiery. Occasionally there was a reëlection of a larger portion of the old members; until, finally, from the time of the outbreak of the controversy over English statutes, in 1722, until the end of the proprietary government, there was seldom an election in which at least fifty per cent of the old members were not reëlected — sometimes even sixty or seventy per cent. From 1740 there were always a few members, like Henry Hooper, Thomas Worthington, John Mackall, and Phil Hammond, who had seen service in that house for twenty years or more. It is unquestionably true, however, that from 1739 to 1760 the leaders of the opposition, such as Phil Hammond, were patriots of an inferior type. They were unreasoning radicals, determined to oppose the government in every possible way, even to the sacrifice of the real welfare of the country, and to delude their ignorant constituents in order to retain power.[1] In 1749 the committee on elections and privileges reported that it had of late become customary for candidates long before and at the time of election to give uncommon entertainments and there, after getting people drunk, get their promise.[2] In 1754 Governor Sharpe, after giving the lord proprietor an account of the conduct of the lower house, wrote: "I beg to ask your Lordship's consideration whether it be impracticable or improper to fall upon any method to put a stop to such perverseness as might generally be per-

[1] Calvert Papers, No. 2, p. 93 *et seq.* [2] L. H. J., June 17, 1749.

ceived in the proceedings of the lower house of assembly which is in a great measure owing to the short duration of our sessions which terminate at the end of three years. Few gentlemen will submit so frequently to the inconveniences that such a canvass for seats in that house must necessarily subject themselves to. By which means there are too many instances of the lowest persons, at least men of small fortunes, no soul, and very mean capacity, appearing as representatives of their respective counties. As there would be no want, I apprehend, of gentlemen to appear as candidates if the drudgery of electioneering was to return less frequently, I submit to your Lordship's wisdom whether there may be any impropriety (if a more agreeable choice of members should be made) in continuing the next assembly for more years than has been lately usual or customary."[1] The interval between elections was not lengthened. But Hammond died in 1760, and two years after his death the same governor wrote: "We have had a general election at which many well-behaved, sensible men were chosen in the stead of such as I never desired to see again in the house."[2]

From that time until the Revolution the leading members of the lower house were mostly able lawyers from such of the best families of the province as the Goldsboroughs, Bordleys, Pacas, Keys, Halls, Johnsons, Tilghmans, Chases, Gales, Worthingtons, Hoopers, Ringgolds, Ridgleys, Lloyds, and Hollidays.

Finally, during the last years of the proprietary government, a capable observer wrote as follows with respect to the lower house: "The delegates returned are persons of the greatest consequence in their different counties, and many of them are frequently acquainted with the

[1] Sharpe's Correspondence, Vol. I, p. 68.
[2] *Ibid.*, Vol. III, p. 24.

political and commercial interests of their constituents. I have frequently heard subjects debated with great powers of eloquence and force of reason; and the utmost regularity and propriety distinguish the whole of their proceedings."[1]

In 1650, the year in which the representative system became permanent, each delegate received fifty pounds of tobacco — equivalent to ten or twelve shillings — for each day's service in assembly, besides an allowance to cover the necessary ferry expenses. In 1661, after the price of tobacco had fallen, each delegate received 150 pounds of tobacco a day besides the ferry expenses. But in 1662 the members of the upper house, who had hitherto received nothing from the country for their service in assembly, made a request for a legislative enactment to provide payment for their own services as well. The consequence of which was that from that time until after 1688 the members of the upper house continued to receive from the country no compensation for their service while the allowance to the delegates was reduced to payment only for their food and lodging, during the session, and the necessary ferry expenses.[2]

Until 1676 the allowance to the delegates from any one county was paid by that county, although levied upon it by the General Assembly; but from that year the allowance to delegates was paid in the public levy on the whole province. When the upper house was asked to consent to the change, it expressed the desire that its members should be allowed 200 pounds of tobacco a day, while those of the lower house should be allowed 150 pounds.[3] But its desire was again left unsatisfied;

[1] Eddis, p. 126.

[2] Proceedings and Acts of the General Assembly, 1637–38 to 1664, pp. 439, 440, 456.

[3] *Ibid.*, 1666 to 1676, p. 509.

and in 1682 the lower house resolved that its members were the only representatives of the freemen, and that the public ought not to bear the charge or expense of the members of the upper house.[1]

Under the royal government, however, an act of assembly was passed which allowed 150 pounds of tobacco a day to the members of the upper house and 140 pound to the members of the lower house, besides itinerant charges. Although, on several occasions, propositions were offered to reduce that allowance or to dispense with it entirely, it may be doubted if any of them were strictly serious. For the lower house usually made the proposition of a one-half reduction in connection with some other movement, such as the reduction of fees; and the upper house replied to the same by proposing that both houses should serve the country gratuitously. With the exception of the year 1733, the lower house seems never to have considered the question of going that far.[2] Consequently, the allowance as first fixed by the law under the royal government remained unchanged during the proprietary government of the eighteenth century.

The organization of the lower house and the manner of its procedure, with but few interruptions, grew more and more like that of the British House of Commons. Its officers were at first only the speaker and the clerk; but it soon had a doorkeeper and a sergeant-at-arms. It always chose its own speaker. The choice, however, had to be confirmed by the governor. At the time the Assembly was divided into two houses the governor chose the clerk of each house. From then until 1671 the lower house usually chose its own clerk. From that year until

[1] Proceedings and Acts of the General Assembly, 1678 to 1683, p. 373.
[2] L. H. J., April 10, 1733.

the beginning of the royal government the governor or the lord proprietor seems to have been permitted to choose that officer. Again, in 1708, the governor attempted to revive the practice of the period from 1671 to 1689.[1] He, however, was unsuccessful, and the house ever after continued to choose its own clerk, although that choice had to be confirmed by the governor.[2]

Previous to 1689 the small membership of the lower house and the very limited amount of business transacted therein were unfavorable to the development of a committee system. A committee to audit accounts was, however, early appointed; and to that committee was at times joined either a part or the whole of the other house. A committee on laws, either with or without some members of the upper house, was occasionally appointed to prepare bills. In 1678 a committee on privileges and elections was appointed. But it was not until the establishment of the royal government that the committee on privileges and elections, the committee on laws, the committee on grievances, and the committee on accounts became standing committees. With the exception of the one on laws they were continued until 1776. From 1722 the committee on grievances was also a committee on courts of justice and instructed to inquire into the forms of oaths, commissions, and other public documents. Finally, from 1732 there was usually a committee to view the condition of the arms and ammunition and to inspect the accounts relating to the fund therefor, and also a joint committee of the two houses to inspect the accounts of the paper currency office.

Previous to 1689 the procedure upon opening a newly elected assembly was very short and simple. It consisted in little more than the choice of a speaker, his

[1] L. H. J., September 27, 1708. [2] *Ibid.*, May 11, 1749.

acceptance by the governor, and the passing of some rules of order. Until 1678 the governor's opening speech seems to have been of little consequence. Until 1682 the speaker did not ask for privileges. No oath was taken by the delegates before 1678. Prior to 1692 there were no standing committees to appoint; and until 1722 there were no standing resolutions to agree upon.

But from the closing years of the seventeenth century, after a newly elected assembly had met, the order of procedure varied little, and was somewhat as follows: Two delegates first informed the governor that a sufficient number of delegates had met to compose a lower house. Two members of the upper house and its clerk then entered the lower house and administered to each delegate present the oaths of allegiance, supremacy, abjuration, and test. When all had taken those oaths, two members of the upper house were sent to tell the delegates that the governor required their attendance in the upper house. As soon as they had come, the governor required them to return to their own house and choose a speaker. When the choice had been made, two members of the lower house informed the governor. Whereupon two members of the upper house were sent to tell the lower house that the governor required them to come to the upper house to present their speaker. After the governor had approved of the choice of a speaker, that officer, in the name of the lower house, desired the governor, on the lord proprietor's behalf, to allow the delegates freedom of speech and all other of their ancient privileges and liberties. After those were promised, the governor delivered his opening speech to both houses.

The delegates then returned to their own house and chose a clerk. Two members of the lower house at once

informed the governor of their choice, and desired his approval. Upon receiving that, two members of the lower house went with the clerk to the upper house to see him qualify by taking the several oaths. A sergeant-at-arms and a doorkeeper were next chosen. Finally, after the lower house had agreed upon its rules of order, appointed its committees, and—after 1722—agreed upon its standing resolutions, it was ready to consider the governor's opening speech.

Whatever bills originated in the lower house, as well as messages and addresses, were usually framed by a part or the whole of the committee on laws. No bill was ordinarily read twice on the same day. After any bill had passed the second reading it was sent by a committee to the other house.[1] The methods of adjusting differences between the two houses were by messages and conferences. A bill which had passed two readings in one house might pass the second reading in the other with some amendments. But, whether amended or not, no bill could become a law until it had passed the third reading in both houses and received the governor's signature, which was given in the upper house usually at the close of the session, both houses being present.

During the first few years after the founding of the colony, the lord proprietor sought to reserve to himself or to the governor in council the sole right of initiating legislation. For that reason he disallowed all the acts passed by the first Assembly, in 1634–35, which it seems probable was called without his special directions; and at about the time that he ordered his dissent to be published, he sent over a draught of several laws, authorized the governor to prepare others, and gave the freemen no other option than to pass all of those laws without any

[1] From the year 1732 the yeas and nays were frequently recorded.

amendment or else to pass none at all.[1] When the Assembly had given them some consideration, the governor and the secretary gave fourteen votes for themselves and their proxies in favor of their passing, but all of the remaining thirty-seven votes were given in opposition to them. Later in the same session it was voted that those laws should be taken up one by one instead of as a whole body. Finally the Assembly, again practically assuming the right of initiative, passed such acts as it saw fit; and it was reported that both the governor and the secretary had declared the laws sent by the lord proprietor to be unfit for the colony.[2] At any rate, the governor wrote to the lord proprietor that since there were so many things in them which were unsuitable to the people's good and no way profitable to the lord proprietor, and since the freemen had been given the privilege neither of selection among them nor of amending them, they desired to suspend them all. Moreover, the governor gave it as his opinion that those passed by the Assembly would be as much to the lord proprietor's honor and profit as those sent by his lordship.[3] The result was that although the lord proprietor rejected this second body of laws sent over to him, he surrendered, in 1638, his claim to the sole right of initiating legislation, and declared that for the future all acts passed by the Assembly, assented to by the governor, and not contrary to the laws of England, should be in force, so long as he did not declare his rejection of them.[4]

But troublous times followed; and about ten years later, just after the suppression of a rebellion, the lord proprietor

[1] Proceedings of the Council, 1636 to 1667, p. 51.

[2] Calvert Papers, No. 1, p. 158.

[3] *Ibid.*, p. 189 *et seq.*

[4] Proceedings and Acts of the General Assembly, 1637–38 to 1664, p. 31.

endeavored to purchase some control over the initiation of legislation by sending over a body of sixteen laws, and declaring that only on condition that the Assembly, without amendment, passed them all as perpetual laws — that is, laws without any limitation as to their duration — would he agree to allow the country to receive one-half of his customs duties on tobacco exported in Dutch ships. To such a proposition, however, the Assembly replied: "We do humbly request your Lordship hereafter to send us no more such bodies of laws, which serve to little other end than to fill our heads with suspicious jealousies and dislikes of that which verily we understand not."[1]

Thus ended in failure the lord proprietor's second attempt to control the initiative in legislation. He never made another. After the legislative Assembly had once acquired that right, it never lost it. Charles Calvert, however, first as governor and later as lord proprietor, was accustomed to cause bills to be introduced into the Assembly; and in case the lower house refused to pass them, he would call that body before him in the upper house and there exert all the pressure at his command.

From the beginning of the eighteenth century disagreement with respect to any proposed legislation was attended to almost solely by messages between the two houses, between the governor and the lower house, or by conference of a few members from each house. Furthermore, following English precedent, from the establishment of the royal government money bills could originate only in the lower house. From 1740 the upper house was denied the right to amend such bills; and at times, also, the lower house even declined to confer with the other

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, pp. 240, 241, 243; also p. 262 *et seq.*

house with respect to disputed points in any bills of that kind.

Until 1681 the lord proprietor reserved to himself an unlimited time in which to veto any act passed by the Assembly and assented to by the governor. But there was no occasion to charge him with abuse of that right until 1669, when he vetoed several acts after they had been in force for three years. When he had done so the lower house presented it as a grievance that there was no one in the province who was authorized so to assent to an act that it could not thereafter be annulled without the consent of both houses of Assembly.[1] The matter was, however, dropped, and nothing was heard of it again for twelve years, when the lord proprietor again vetoed a favorite act that had been passed three years before. This time the lower house endeavored to secure the passage of an act which should provide that the governor's assent be final. When the upper house had refused to pass it, the lower house presented the lord proprietor with a petition regarding the matter. In reply the lord proprietor agreed that thereafter when he was present in the province he would give his assent or dissent to any act before the conclusion of the session at which it was passed, and that when he was out of the province he would give such assent or dissent within eighteen months after the passing of the act. Attempts of the lower house at the two following sessions to have such an agreement embodied in a law of unlimited duration were, however, unsuccessful, even though the lower house agreed to extend the time to twenty months.[2]

The Revolution followed, and under the royal govern-

[1] Proceedings and Acts of the General Assembly, 1666 to 1676, p. 161 *et seq.*

[2] *Ibid.*, 1678 to 1683, pp. 118, 152, 160, 175, 178, 181, 182, 508, 509, 512, 592, 594, 596; *ibid.*, 1684 to 1692, pp. 34, 35, 38, 40, 49, 97, 100, 108, 388.

ment the right of the crown to exercise the veto power was never disputed. Then, from the time of the restoration of the proprietary government to the year 1729 inclusive, the lord proprietor vetoed — in each case quite promptly — at least fifteen acts. After four of them had been rejected in that one year, the lower house complained of the lord proprietor's frequent exercise of the power as a grievance, and as not warranted by the charter, and asked the upper house to join with it in taking whatever steps were deemed necessary to settle the matter.[1] It is difficult to conceive on what ground that right of the lord proprietor could have been seriously called in question, except that the English crown had ceased to exercise the same right with respect to acts of Parliament. Then, too, the lord proprietor was a non-resident, whose chief interest lay in his territorial revenue. So, although he was in one sense clear as to his right, he, like the crown, was taught to realize that it was not expedient for him to make use of it. He vetoed an act in the year 1732, and then did not again exercise that power for ten years, when he did so for the last time. Thereafter, the lower house effectively expressed its doubt as often as the question was raised.[2]

Still further, the extreme radicals, under the influence of Pennsylvania, were not contented with denying the lord proprietor all right to act as a part of the legislature, but they even denied that the upper house had any place whatever in the constitution.[3] Moreover, as the lower house came to find the other three parts of the legislature more and more opposed to such measures as it most strongly contended for, that body made its power felt more and more by passing resolutions to influence the

[1] L. H. J., August 5, 1729; see also Calvert Papers, No. 2, pp. 69, 93.
[2] L. H. J., April 27, 1758. [3] *Ibid.*, December 2, 1757.

courts as well as public opinion,[1] and by calling before its bar any minor officer charged with offence. Thus, in 1758, Governor Sharpe wrote the following: "Our Lower House has indeed, of late years, claimed a right of calling before them any person they thought proper, and their commands have been generally obeyed, though as generally exclaimed against as oppressive. . . . They have assumed all the powers of a British House of Commons, and have for some years been exercising those powers in such a manner as tended to render all the inferior courts of judicature contemptible or subservient to their purposes."[2]

The first great increase in the power of the Assembly was made when it gained the right of initiating legislation. The second was at the beginning of the period of royal government, when the lower house gained so much control over its own organization, and when the transaction of so many branches of public business was taken from the council and put in charge of the Assembly. The later growth in power of the popular branch will be more fully seen after due attention has been given in the following chapters to the great controversies in Assembly over important questions, such, for example, as those relating to the English statutes, officers' fees, dues of the clergy, the militia law, a fund for arms and ammunition, license money from ordinaries, fines and forfeitures, the support of the council of state, taxing the most lucrative offices and the lord proprietor's estates and quit-rents, and the appointment of an agent to represent the lower house before the home government.

[1] L. H. J., March 20, 1732–1733, and April 10, 1733.

[2] Sharpe's Correspondence, Vol. II, p. 124; also L. H. J., May 11 and 20, 1738.

CHAPTER III

THE ADMINISTRATION OF JUSTICE

In accordance with the old conception of a king as God's anointed, and therefore the fountain of justice within his realm, the lord proprietor was, in theory, solely intrusted with the power to administer justice in Maryland. But he, in his turn, transferred the power to administer it to the governor as chief justice, chancellor, and admiral, to the members of the council as associate justices, and to such other officers as the governor in council chose to appoint for that purpose. In the early commissions, the governor, as chief justice, was given the sole authority to hear, determine, and pronounce judgment in all cases both civil and criminal, save that whenever life, member, or freehold was at stake, the lord proprietor required that at least two of the council should sit as judges with him.[1] And in those same commissions each member of the council was made a justice of the peace.

However, in matters pertaining to justice, the usage and custom of the mother country had an important influence on Maryland practice. As in the old Anglo-Saxon shiremoot, and particularly in the county of Durham, the freemen had been accustomed to meet in the capacity of a law court, as well as in that of a legislative assembly, so also, in Maryland, previous to the division of the Assembly into two houses, that body occasionally tried offenders

[1] Proceedings of the Council, 1636 to 1667, p. 53.

charged with having committed any offence, from that of a simple misdemeanor to that of piracy, murder, or treason.[1] But after the division, the judicial functions of the upper house were restricted to those of a high court of appeals, and from 1692 even that jurisdiction was intrusted to the governor and council ; while the jurisdiction of the lower house as a law court became limited to the trial of minor officers charged with neglect or injustice in the performance of their duties.

But the Assembly at no time tried more than a small part of all the cases that arose. By the year 1638 the governor had become chief justice, and the members of the council associate justices in what was called the county court, which, next to the Assembly, was the supreme court of the province.[2] Below the governor as chief justice and the members of the council as associate justices were the inferior justices of the courts in the smaller local districts. By the year 1642 the name of the court in which the governor and council were justices was changed from county court to provincial court. From that year until 1685, with the governor and council as justices, the provincial court was in no way limited or restricted in original jurisdiction over any case arising anywhere within the province, and it had appellate jurisdiction over all cases brought from the county courts. Under such conditions it was not to be expected that there would be many appeals from the governor and council, sitting as a provincial court, to the governor and council sitting as a court of appeals in the upper house of the legislative body. There were, however, several such instances ; and in a few cases the judgment of the lower court was reversed.

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, pp. 16, 17. 18, 119.

[2] *Ibid.*, pp. 47, 48, 49, 83.

Of the courts below the provincial court there were, at one time or another, the manorial courts, the hundred court, the county court, and the court of a single justice of the peace for the recovery of small debts. But of the manorial courts, which never grew to any great importance, sufficient notice has already been taken.[1]

Previous to 1650 it does not appear that there was any erection of counties in an express and formal way; yet, in reality, the western shore was treated as one county, called St. Mary's, and the eastern shore was treated as another county, called Kent. The more important settlements on the western shore were erected into hundreds as constituent parts of St. Mary's County, while those on the eastern shore were erected into hundreds as constituent parts of Kent County. Whenever a hundred was erected, its head officer was constituted a justice of the peace. Under him was the constable. He was appointed either by the justice or by the governor, and was intrusted with the duties both of constable and coroner. As justice of the peace, the head officer of the hundred was given such power as belonged to one or even to two justices of the peace in England. Certain grievous offenders he was directed to bind over to the county court for trial; but others he was authorized not only to try but to punish by imprisonment, fine, or corporal punishment, provided the fine did not exceed a certain fixed number of pounds of tobacco, or that the corporal punishment did not involve the loss of life or member.[2]

Since in St. Mary's County the governor and council at first constituted the county court as a supreme court for the entire province, it was in Kent County that what became the ordinary county court first began to develop.

[1] *Supra*, pp. 52, 53.

[2] Proceedings of the Council, 1636 to 1667, pp. 70, 89, 90.

The first step toward the organization of such a court was taken in December, 1637, when Governor Calvert commissioned Captain George Evelin as military commander of that island, authorized him to choose six or more able persons to advise him, empowered him to appoint all other officers necessary for the preservation of the peace or the execution of justice, and also authorized him to hold a court as often as need should require for the trial of civil cases not extending to life or member.[1] The commission thus constituting the court for that county was for several years frequently renewed and modified. In 1639 three assistants of the commander were appointed by the governor.[2] In 1642 those assistants of the commander were styled commissioners, and the jurisdiction in civil matters was made to include all cases not extending to a freehold.[3] In the same year, also, by act of assembly express provision was made for appeal from that court to the provincial court.

In 1649 the lord proprietor gave instructions for the erection of a new county, and appointed its commander. The powers which he defined for that officer were almost exactly the same as those given by the first commission to the commander of Kent Island.[4] But those instructions were never executed. When Anne Arundel County was erected the next year, Governor Stone appointed both the commander and the seven commissioners, and authorized the commander, with any three or more of the commissioners, to hold court from time to time for the trial of criminal cases not extending to life or member, and all civil cases, regardless of value, saving only the right of appeal to the provincial court whenever the value in

[1] Proceedings of the Council, 1636 to 1667, p. 59.
[2] *Ibid.*, p. 88 *et seq.*
[3] *Ibid.*, p. 124 *et seq.*
[4] *Ibid.*, p. 237 *et seq.*

question was equal to or exceeded £20 sterling or two thousand pounds of tobacco.[1]

Finally, in 1658 and 1661, the organization of the county court assumed its final form. The commander was dropped, and in his stead four or more of the commissioners, or justices, were named as justices of the quorum; and no court could be held unless at least four of the justices were present, of whom a justice of the quorum was to be one. Each justice was required to take a prescribed oath. A clerk was appointed. Provision was made for a grand jury to make inquest. While jurisdiction in criminal cases was unchanged, in civil matters it was at this time limited to cases in which the value did not exceed three thousand pounds of tobacco. Thereafter there was little change with respect to the county courts except in the extent of their jurisdiction.[2]

After the erection of counties, the hundred court seems to have disappeared. But in 1678 an act of assembly, which provided for the recovery of any debt not exceeding fifteen hundred pounds of tobacco before a single justice of the provincial court or before any two justices of a county court, was the first action taken toward providing in each county a court for the recovery of small debts before a single justice.

Before 1689 three other courts of justice had been more or less distinctly organized, but the chief administrator in each of them was always some justice of the provincial court. They were the chancery court, the admiralty court, and the probate court. Until 1661 the governor was chancellor. But from that year until 1689 Philip Calvert, an uncle of the governor and always a justice of the provincial court, held that office. Until 1684 the

[1] Proceedings of the Council, 1636 to 1667, p. 257, 258.

[2] *Ibid.*, pp. 348, 422, 423, 424.

governor, with or without the assistance of his associates in the provincial court, was judge of the admiralty court. But in that year that court was given a constitution separate from that of the provincial court, although one of the justices of the provincial court was appointed judge of the admiralty court. As early as 1638–39 an act of assembly made the secretary judge of probate, and authorized him to grant letters of administration. As such he remained until 1673, when that office was given to the chancellor, and provision was made for an appeal from his decisions in probate cases to the lord proprietor, to the governor, or to such other persons as the lord proprietor or the governor should appoint for that purpose.

Before 1689, therefore, each of the two houses of Assembly had some distinctly judicial functions. But ordinarily the provincial court was the supreme court of the province. Its justices were appointed not during good behavior, but during the pleasure of the lord proprietor. Moreover, those justices were the governor and council as well as the upper house of the legislative Assembly. Very closely connected with that supreme court were the chancery court, the admiralty court, and the probate court. The only inferior courts of much importance were the several county courts, the organization, jurisdiction, and appointment of justices for which were determined almost solely by the justices of the provincial court. During the earliest years of the colony there was considerable legislation relating to the courts of justice; but from 1647, especially from 1661 until the Revolution of 1689, it was a growing tendency of the lord proprietor or the governor to prevent the interference of the lower house and to make the system for the administration of justice more and more strongly

centralized. All was to be kept as dependent as possible on the lord proprietor as the fountain head.

But with the establishment of the royal government decentralization began. The governor and council, instead of the upper house, was at once constituted as the court of appeals. Although members of the council were still allowed to be justices of the provincial court, the one body grew more and more distinct from the other. After 1692 the governor was never the chief justice of the provincial court. In 1709, and again in 1720, the lower house presented it as a grievance that the members of the council were also justices of the provincial court.[1] The consequence was the establishment of a precedent that a justice who had sat in the provincial court during the trial of any case should not sit with the governor and council when they heard the same case on appeal.[2] Moreover, it is probable that it was this very precedent that tended to cause a decreasing number of the council to be appointed justices of the provincial court. After 1730 it was seldom that more than two or three of the council were justices of the provincial court, and when, in 1760, there were two, the attorney general himself recommended that they should be replaced by others. He did so because he felt that by their sitting in the provincial court the court of appeals had on some occasions been deprived of their judgment when much needed there.[3]

Again, in 1692, the governor, with the approval of the council, separated the office of chancellor from that of his own; and although royal instructions, received in 1699, directed that those offices should be reunited, the lower house had little difficulty in having the governor place some restrictions upon himself in that office. Thus,

[1] L. H. J., October 21, 1720. [2] U. H. J., October 26, 1720.
[3] Portfolio 4, No. 53, Bordley to Sharpe.

in that same year, 1699, he agreed that two of the council should assist him in the court of chancery on the first hearing, and that in case a rehearing was asked for he would have at least five of the council sit with him.[1] In 1718 the governor and council, yielding to the request of the lower house, consented to the passage of an act of assembly whereby, — although the governor as chancellor might sit alone during the first hearing, — upon a rehearing, the council was to sit with him. Finally, by the middle of the century, the chancellor had ceased to sit in the court of appeals when that court was hearing a chancery case.

It appears then that, while under the first period of proprietary government the centralization of the system of administration of justice was increased, from the overthrow of that government in 1689 the most extreme features of that centralization were gradually abandoned in response to the needs of administration, until the court of appeals, the chancery court, and the provincial court became quite distinct from each other.

Furthermore, from the beginning of the royal government the lower house quite successfully contended that no courts or offices involving the imposition of new fees could be erected without its consent. Although the lower house, in 1692, expressed a desire for circuit courts, yet when the board of trade recommended that justices of the provincial court should hold circuit courts in the several counties, and when the governor and council, in support of that recommendation, endeavored to secure a legislative provision for the same, the lower house does not seem to have favored the plan. Still, that house kept referring the matter to the next Assembly — perhaps that the desire of the people might be ascertained — until in 1701 it was totally rejected.[2] The board of trade,

[1] U. H. J., July, 1699.

[2] L. H. J., May 14, 1701.

however, would not yet allow its recommendation to be dropped. In 1707 it offered some modification of its former plan, and then prevailed upon the crown to issue an instruction that its revised plan should be executed.[1] Whereupon, in accordance with that plan, the governor and council proposed that the justices of the provincial court should be reduced to four, that the sessions of the provincial court at Annapolis should be reduced from six to four a year, that those four justices should hold circuit courts in the several counties twice a year, and that the Assembly should settle upon each of them an annual salary of at least £100 per annum, besides their travelling expenses. Then the governor, in a speech at the opening of a session, strongly urged that legislative provision should be made for the execution of the proposed plan, and intimated that upon the failure of the Assembly to make such provision, the crown would send over justices from England. But the lower house still held out. However, in 1708, it requested that an account of the proposed expense should be laid before it. In response to that request the governor showed that, while the annual cost to the country by the old plan had been 83,908 pounds of tobacco, by the proposed plan it would be 100,000 pounds; but he promised that so long as he should remain in the country he would give each year 5000 pounds of tobacco out of his fees as chancellor toward making up the difference.[2] Yet such an offer did not avail, for the lower house was at that time too strongly bent on extending the jurisdiction of the county courts; and after the governor and council had established the circuits without the consent of the lower house, that body complained that they were not conven-

[1] U. H. J., March 29 and 31, 1707.

[2] L. H. J., March 26 to April 11, 1707.

ient to the country, that justice was not so well administered as it had been, and that they had been imposed upon the people without their consent. Therefore, contending that the justices should be paid by those who had set them at work, the lower house refused to make any allowance in the journal of accounts to pay them for their services.[1] Hence the circuit courts were abandoned until the year 1723. Long before that time, however, the jurisdiction of the county courts had been extended, while that of the provincial court had been restricted. All parties had therefore come to feel that, as the business of the latter court was increasing, it was highly desirable that four of its justices — two for each shore — should be chosen to hold circuits in the several counties. Accordingly, an act for that purpose was passed, but it provided that the county courts should not thereby be divested of any of their former jurisdiction.

With respect to the jurisdiction of the several courts, the chief contention arose over the dividing line between that of the provincial court and that of the several county courts. There were three reasons why the lower house was so constantly striving for an extension of the jurisdiction of the county courts : first, the general desire of the people to extend their control in local matters ; second, the desire of the people to lessen the inconvenience and expense of obtaining justice ; third, by extending that jurisdiction the general control of the lower house in the department of justice would be increased, since so many of its members were justices in some county court.

As already stated, when the organization of the county courts had reached its final form in the year 1661, their jurisdiction was limited to criminal cases not extending to life or member and to civil cases in which the value did

[1] L. H. J., October 26, 1710.

not exceed three thousand pounds of tobacco. In the year 1678, at the request of the lower house, they were given jurisdiction over all cases of debt. But only two years later their jurisdiction in most civil cases was reduced to those in which the value involved did not exceed sixteen hundred pounds of tobacco. Although their jurisdiction in criminal matters always remained limited to cases not extending to life or member, — negro slaves excepted, — in 1681 theft of what did not exceed one thousand pounds of tobacco in value was made punishable by whipping or the pillory, instead of by the loss of members, and thereby such an offence was brought within the jurisdiction of the county courts.

Two years after the establishment of the royal government the jurisdiction of those courts in civil cases was extended to all such as did not exceed in value ten thousand pounds of tobacco or £50 sterling. In 1697, and again in 1706, requests from the lower house for a still further extension of that jurisdiction were refused.[1] But by 1708 the distress of the poorer classes had become alarming; and, accordingly, in that year, the lower house stated that the limited jurisdiction of the county courts was the cause of the many actions being brought in the provincial court which might have been heard and determined in the county courts much sooner and for one-half the cost. In view of such alleged conditions, the governor was asked to issue new commissions to the county courts in order to give them power to try all actions except those for determining title to land, and except criminal cases involving life or member;[2] and only a little later commissions were issued in which the jurisdiction was extended to all civil cases in which the value involved did not exceed thirty thousand pounds of tobacco or £100 sterling.

[1] L. H. J. June 1, 1697 and April 19, 1706.

[2] *Ibid.*, December 8, 1708.

But although the possible jurisdiction of the county courts was so much enlarged, there was as yet no restriction of that of the provincial court. The consequence was that the very next year, 1709, the lower house presented it as a grievance of the people that almost all actions were tried in the provincial court, that thereby it frequently happened that the cost of trying a small action was greater than the value in dispute, and that thereby the plaintiff often lost both his debt and costs, while the defendant suffered both long imprisonment and the ruin of his estate.[1] But the province was at this time without a governor, the authority of the president of the council was limited, and so, although the upper house conceded that the grievance was a real one, it did no more at this time than to recommend that application for its redress should be made to the next governor. The next governor, however, did not come until five years later, while during the interval the condition of the poor seems to have become more alarming. The consequence was that in 1710, without waiting longer for a new governor, the lower house asked for an act to limit the jurisdiction of the provincial court in original cases to those where the debt or damage was equal to or exceeded £30 sterling or seventy-five hundred pounds of tobacco. This time even the upper house felt the grievance to be so heavy that it was causing many people to leave the province ; but it objected to the bill on the ground that it would trench too much upon the royal prerogative. Such an object was inconclusive to the lower house, and it at once resolved that it would proceed to no other business until the bill had been passed.[2] This resolution had the desired effect, for when the upper house had again considered the

[1] L. H. J., November 2, 1709.

[2] *Ibid.*, October 27 to November 1, 1710.

matter, that body, in its turn, unanimously resolved that, if the bill were not enacted into a law, the peace of the province might be greatly imperilled. It, however, amended the provisions of the bill so as to admit the jurisdiction of the provincial court in original cases where the debt or damage was not less than £20 sterling or five thousand pounds of tobacco. The lower house reluctantly accepted the amendment, and the bill became a law.[1]

In 1714 merchants and lawyers, in numerous petitions against the act, complained of the great partiality shown in the county courts by the debtors' relatives and friends, also that attorneys practising in those courts could not be depended upon, and that judgments there were generally erroneous. They also stated that the act discouraged well-educated and competent attorneys from practising in the provincial court, and that merchants having money to collect had to employ twelve agents — one for each county — instead of only one as before. While as to people leaving the province, the secretary — the fees of whose office the act had diminished — claimed that it was not the fees or costs of suits that obliged them to do so, but their debts.[2] The board of trade, however, offered no objections to the act, and it was continued for fifty-nine years, when it was displaced by one which further extended the jurisdiction of the county courts. From the year 1739 the lower house at nearly every session passed a bill for such further extension and, finally, in the year 1773, the bill became a law and gave the county courts jurisdiction concurrent with that of the provincial court in all criminal cases, and exclusive jurisdiction in all civil cases in which they had formerly had only concurrent

[1] U. H. J., November 2 and 3, 1710.

[2] *Ibid.*, June 29, 1714.

jurisdiction ; that is, exclusive jurisdiction in all cases in which the value involved did not exceed £100 sterling or thirty thousand pounds of tobacco.[1]

The act of assembly passed in the year 1692 for the recovery of small debts was chiefly for the purpose of removing such cases from the jurisdiction of the provincial court. It provided for the recovery of debts, not exceeding the value of fifteen hundred pounds of tobacco, before a single justice of the provincial court or before any two justices of a county court. When the jurisdiction of the county courts had been extended in civil cases, and that of the provincial court restricted, two acts of assembly of the year 1715 made special provision for trying cases of debt. One of them directed that where the debt did not exceed four hundred pounds of tobacco or 33*s*. 4*d*. sterling it should be recoverable before a single justice of the peace. The other directed that where the debt was more than four hundred but not more than one thousand pounds of tobacco, or more than 33*s*. 4*d*. sterling but not more than £50 sterling, it should be recoverable in the county courts. The same act also directed that if a plaintiff brought suit in the county court for the recovery of a debt that was less than four hundred pounds of tobacco or less than 33*s*. 4*d*. sterling, he should be non-suited ; and, furthermore, that if a plaintiff brought suit in the provincial court for the recovery of a debt that was less than fifteen hundred pounds of tobacco or less than £6 5*s*. sterling, he, too, should be non-suited. Finally, in the year 1732, the amount of the debt recoverable before a single justice was increased to six hundred pounds of tobacco or 50*s*. currency.

[1] In the year 1763 the county courts were given jurisdiction concurrent with that of the court of chancery in all cases in which the value involved did not exceed five thousand pounds of tobacco or £20 sterling.

In 1715 the chancery court was, by act of assembly, excluded from jurisdiction in cases in which the original debt or damage did not amount to 1201 pounds of tobacco or £5 1*d.* sterling; and in 1763 the county courts were given jurisdiction concurrent with that of the chancery court in all cases in which the value involved did not exceed five thousand pounds of tobacco or £20 sterling. In 1748 the committee on laws was ordered to make inquiry as to whether the people of Maryland were not of right entitled to have writs of replevin issue out of the county courts. That committee reported that by the custom in England the people of Maryland were so entitled, and for the next quarter of a century the lower house, at nearly every session, passed a bill for authorizing the county courts to issue those writs.[1] In 1769 the great objection of the other branches of the legislature to that bill appeared when the upper house so amended it that the fees of the chancellor should not be diminished in case the bill became a law; and when the lower house pointed out that by the laws of England no such fee was reserved to the chancellor as the price of the ease and convenience of the subject, the upper house replied that in England the support of the chancellor was not entirely dependent upon fees as was the case in Maryland.[2] How could such a reply have given any satisfaction when in Maryland the chancellor was the governor and from that office was receiving an annual income of £1400 collected by a law which the lower house was then contending was not in force? It is not strange, therefore, that in 1773, during the great controversy over fees, the opposition to the replevin bill gave way. And so another long standing contest ended in the triumph of the representative-house.

[1] L. H. J., May 26 and June 10, 1748.

[2] U. H. J., December 13 and 18, 1769.

A similar contest arose with respect to the jurisdiction of the deputy commissaries and the payment of fees for services performed by them. As early as the year 1681 the judge of probate, or commissary general as he was usually called, was authorized by the lord proprietor to appoint a deputy in each county; yet at the time of the Revolution of 1689 one of the charges against the proprietary government was that great trouble and expense was imposed upon the people in the remote parts of the province by being obliged to come to the central office for the probate of wills and the granting of letters of administration. An act of assembly of 1692 did little more than to direct that the laws of the mother country relating to this branch of justice should be applied in Maryland. In the year 1715 an act of assembly directed that the deputy commissary in each county should prove wills and grant letters of administration in any case where there was no dispute. But any matter in dispute was to be decided by the commissary general alone, and in such cases the deputy commissary was not to proceed until he had received directions from his superior. Again, the deputy commissary was, by this act, to pass accounts relating to the estates of deceased persons, in which the value involved did not exceed £50 sterling, and about which there was no controversy.[1] In practice the commissary general did not pass many of the larger accounts, but issued a special commission to the deputy whenever the value exceeded £50 sterling. An objection to this was that when accounts were thus passed a double fee was charged, one-half of which went to the commissary general and the other half to the deputy. The consequence was that by 1729 the practice was giving general dissatisfaction. In that year the lower house asked that

[1] In 1763 this limit was extended to £150 currency.

the deputy commissaries should serve during good behavior, and that their jurisdiction over the passing of accounts should be greatly enlarged.[1] The latter request was supported on the ground that the restraint as imposed by the act of 1715 was of no advantage to any one except the commissary general, whose interest, it was held, ought not to stand in competition with that of the whole country. The upper house, however, stood firm. The question was not one of fees merely. It was one of centralization *vs.* decentralization. After the act of 1747 for the inspection of tobacco and the regulation of officers' fees had been passed, the lower house contended that the oath prescribed therein forbade the charge of the double fee. But the oath was not taken. When the officers for whom the lower house claimed that the oath was intended had refused to take it, the governor was asked to enforce that part of the law. But to this request the governor replied that the law was equivocal with regard to the oath, that the officers concerned were not appointed by him, and that the act imposed no penalty for not taking the oath. The lower house, by a vote of 34 to 15, then resolved to amend the law so as effectually to prevent the commissary general from receiving any fee when the service was performed by his deputy. But it was of no avail. The matter continued as a subject of bitter contention as long as the proprietary government endured. The commissary general, supported by the upper house, took the view that as the deputy commissaries were appointed for the convenience of the people, it was fair to demand double fees when the service was performed by one of the deputies, while the lower house regarded it as absurd that a double fee should be paid for a single service.

It does not appear that there was any restriction on

[1] L. H. J., July 26 and 29, 1729.

appeals from the county courts to the provincial court until 1676, when an act of assembly was passed to insure payment of the cost of an appeal by requiring that no appeal should be allowed before the party applying therefore had given bond for double the amount adjudged to be recovered from him by the first judgment. In 1692 a further step was taken when an act forbade an appeal to be made on any terms whatever from a county court to the provincial court if the amount of the judgment in the county court did not equal or exceed twelve hundred pounds of tobacco or £6 sterling.

At the time the court of appeals was made distinct from the provincial court, the crown directed that an appeal should be allowed to the court of appeals only when the value in dispute exceeded £100 sterling, and then only after the proper security had been given. However, in 1699, in response to the desire of the lower house, the jurisdiction of that court was extended to all cases in which the value exceeded £50 sterling or ten thousand pounds of tobacco.

By the commission of the first royal governor, appeal might be permitted to the king in council provided the value in dispute exceeded £300 sterling, that the appeal was made within fourteen days after the last sentence given, and that security was given to answer the cost of the appeal, and provided execution was not suspended by reason of the appeal. And it does not appear that those provisions for such an appeal were changed before the Revolution of 1776.

The time at which the county courts should sit was fixed by act of assembly. In the seventeenth century they usually sat six times a year. But for the greater part of the eighteenth they sat but four times a year, — in March, June, August, and November. Finally, in

1770, the June session was abolished. The commissary general was required to hold court once in two months, or oftener, if necessary. The sessions of the provincial court, the chancery court, and the court of appeals were less regular, but they usually sat several times a year.

In both the provincial court and the county courts there was a chief justice and at least four or five associate justices who were of the quorum. The presence of at least one of the quorum and of one other justice was required for a session of the provincial court. While for a session of a county court the presence of at least one of the quorum and of two other justices was required.

To both the provincial court and the county courts were issued the special commissions of oyer and terminer and of jail delivery. The sheriff of each court summoned jurors and witnesses and executed all the sentences of the court. He was given the power of the county; that is, in case of resistance he could, if necessary, summon any person or persons to his assistance. As soon as a session of court was opened, the sheriff made return of a panel of grand jurors who were at once sworn by the court and then sent out to make inquest. When the inquest had been completed, the court was presented with the grand jury's bill of indictment. Both in civil and criminal cases the trial might be by the court alone, or it might be tried before a jury. If both parties agreed to a jury trial, then the cost of the jury became a part of the costs of the suit. If both parties did not agree to a jury trial, then the one that demanded it had to pay the cost of it. However, in criminal cases extending to life or member the defendant might demand a trial by jury without being compelled to give security

for the cost.[1] In case the vote of the justices was equal, the casting vote of the chief justice was decisive.

During the first half of the eighteenth century there were usually ten justices of the provincial court, but from 1760 there were only nine. In that year, also, the attorney general recommended that they be reduced to five. In the case of the county courts, previous to 1730, there were seldom more than twelve and in some cases only eight justices. But from 1733 all the members of the council were placed at the head of every commission for a county court. From 1738, also, the number of justices for each county was otherwise increased until by 1773 there were sometimes twenty, and even as high as twenty-eight, besides those of the council.

Justices of the provincial court, as well as justices of each county court, were commissioned by the governor in a body. All such commissions were renewed at irregular

[1] By a law of 1715 each sheriff was required to summon to the provincial court two grand jurors and three petit jurors, and likewise to summon to the court of his county a "competent and sufficient number" of such jurors. A person summoned either as a juror or as a witness, and failing to appear, was subject to a fine of one thousand pounds of tobacco if the summons was to the provincial court, and five hundred pounds if to a county court. By the same law, a grand jury attending the provincial court was paid three thousand pounds of tobacco, while one attending a county court was paid five hundred pounds; a witness in the provincial court was paid forty pounds of tobacco a day, while a witness in the county court was paid thirty pounds a day. By a law of 1719 every petit jury — both in the provincial and in the county courts — was paid one hundred and twenty pounds of tobacco over and above fifteen pounds of tobacco a day to each juror serving in a county court, and thirty pounds a day for each juror serving in the provincial court. Finally, by a law of 1760, the maximum pay to a grand jury was increased to six thousand pounds of tobacco, petit jurors attending the provincial court were paid forty-eight pounds of tobacco a day, over and above ninety-six pounds to every full jury passing a verdict, and itinerant charges of forty-eight pounds of tobacco a day were allowed every grand and petit juror attending the provincial court.

intervals. But it was not unusual for those to the county courts to be renewed once a year and even oftener, while that to the provincial court was renewed less frequently. But usually the larger part of the old justices were reappointed with each renewal of the commission; so that it was common for the same person to serve on the bench for many years. The appointment of justices during pleasure, instead of during good behavior, gave rise to occasional complaint.[1] But, except in 1729, when the lower house passed a bill for appointing deputy commissaries during good behavior, it was not until the closing years of the proprietary government that the same house ever passed a bill for securing the independence of justices.

Previous to 1689 no other legislative provision was made for the payment of county justices than to allow each county court to levy either a limited or an unlimited sum for defraying necessary expenses of the county. How much of the sum thus levied the justices reserved for their own pay, does not appear. Previous to 1689, also, there was no legislative provision for paying, as such, the justices of the provincial court. But the first Assembly under the royal government passed an act to allow the justices of each county court to levy on their county sufficient to provide themselves payment to the amount of 120 pounds of tobacco for each day's service in court. The same act also provided that each justice of the provincial court, who held no other lucrative office under the government, should be allowed for his itinerant expenses and paid 180 pounds of tobacco for each day's service in that court. From not later than the year 1715 the legislature provided that each justice of a county court should be paid only eighty pounds of tobacco for every day's service, while each justice of the provincial court should be

[1] L. H. J., May 30, 1739; *Maryland Gazette*, October 28, 1773.

paid 140 pounds of tobacco for every day's service, and also receive an allowance for his necessary itinerant charges. In 1728 the lower house voted that instead of paying county justices in the old way, suitors should pay them in fees for each particular service.[1] At the same time, also, the house voted in favor of reducing the pay of justices of the provincial court to 100 pounds of tobacco for a day's service. But on this, as on several other occasions, when the lower house proposed a general reduction of pay for all public service, the other house failed to agree to such propositions. In 1754, when a motion was made in the lower house to have the justices of both the provincial and the county courts paid in fees, it was voted down by a large majority.[2]

Circuit court justices were paid seven thousand pounds of tobacco for each circuit.

Until 1750 the members of the council seem to have received the same pay — 150 pounds of tobacco a day — when sitting as a court of appeals as when sitting as an upper house; but from that year the lower house refused to pay the council when sitting as a court of appeals as well as when sitting as a council.[3]

The chancellor, the judge of probate and his deputies, the sheriffs, and the clerks were all paid in fees charged for each particular service, and to what extent the amount of those fees was determined by the Assembly has already been shown.[4]

Insufficient pay of justices was most felt in the case of those of the provincial court, and especially in the case of the chief justice of that body. As early as 1701–02, when Thomas Smithson was both chief justice of the provincial court and speaker of the lower house, the gov-

[1] L. H. J., October 14, 1728.
[2] *Ibid.*, May 25, 1754.
[3] *Ibid.*, May 30, 1750; June 9, 1752.
[4] *Supra*, p. 191.

ernor and council stated that the chief justice had frequently expressed a desire to resign, but that they had resolved to encourage him to continue by allowing him £50 per annum out of the fifty thousand pounds of tobacco, which they were empowered to levy for defraying the small charges of the province.[1] It was, therefore, recommended to the lower house that the Assembly give him a suitable reward for his services. Although that house resolved itself into a committee of the whole to consider the recommendation, it resolved not to provide for the proposed salary. For, while admitting that Smithson was well qualified as a chief justice, the lower house claimed that no province had done more than to defray the charges of any justice; and as it held that such salaries had always been defrayed out of his Majesty's revenue, it resolved that it would not be justified in burdening the country with the proposed salary.

Nothing was again heard about the matter until the year 1736. The office of chief justice was at that time held by Levin Gale, one of the four members who, two years before, had been expelled from the lower house for accepting office. But his county of Somerset had again returned him, and he was second only to Dulany on the committee on laws. His vote on several questions shows that he was a supporter of the government and not of the opposition, and it may be that it was a design of the opposition to win him over to its side when the lower house acknowledged his merit and ability as chief justice, and voted to allow him £100 in the public levy.[2]

But the very next year when the lower house voted to allow him only £50, on the ground that the allowance of the previous year had been intended for all his preceding services, the upper house declared that the sum was be-

[1] U. H. J., March 20, 1701–02. [2] L. H. J., April 30 and May 1, 1736.

neath the dignity of the Assembly to offer, and of the chief justice to accept. After several messages had followed, the lower house, holding that it was their duty to refrain from squandering the property of their constituents, voted to strike out the entire allowance from the journal of accounts; and although the upper house would not then pass the journal, it does not appear that any such allowance was ever again made.[1]

The natural result of the lack of salary for either chief justice or associate justices was that the supreme court of the province became one of the weakest points in the entire system of government. The chief justice might be rewarded by giving him a seat in the council, and some of those lucrative offices that the councillor always enjoyed. However, that officer was not always a councillor; and the objection to having many of the council as justices of the provincial court has already been noticed.[2] Consequently, during the middle of the eighteenth century, it being so difficult to get men of good capacity to take a seat in that court, two or more of those justices were, at the time, clerks of a county court.

But the attitude of that body in the year 1759, during the trial of a case in which the proprietor's right to escheated land was at stake, had the effect of causing that court to be made much stronger. For after the trial was over Stephen Bordley, the attorney general, gave an account of it, first, to Secretary Calvert, and, later, to Governor Sharpe. In his account to Sharpe he objected to three of the justices because they were county clerks, to two of them because they were members of the council, and to two others because they were extremely weak. So there were only two out of nine against whom he offered no objections.[3]

[1] L. H. J., May 26, 27, 28, 1737. [2] *Supra* p. 234. [3] Portfolio 4, No. 53.

Very soon the lord proprietor, the secretary, the governor, the attorney general, and even the lower house were all interested in reforming the provincial court. Secretary Calvert even confessed that those justices ought to hold no other offices, ought to be appointed for life, and removed only for cause, and ought to be men of stability, sound judgment, honor, and good erudition.[1] In order to induce men of such desirable qualities to serve, he thought the legislature ought to unite with the lord proprietor in providing better pay. In 1765 the lord proprietor offered to allow the appropriation of the income from his disputed right to ordinary licenses toward paying those justices, if the Assembly would pass an act "for the better establishing and securing the independence of the judges, and for rendering the office worthy the acceptance of men of the greatest integrity and ability in the province."[2]

It was doubtless in response to such an offer that three years later — after the Stamp Act controversy was over — the lower house appointed fifteen of its strongest members to serve on a committee to make an estimate of the salaries of three judges of the provincial court, and also to consider ways and means to pay them. In its report that committee recommended a salary to the chief justice of £666 13*s*. 4*d*., and to two associate justices a salary of £400 each. The report provided for the payment of the same by the levy of a tax of £800 on ordinaries, of £80 on hawkers and pedlers, of £480 on carriage wheels, and of £120 on judgments rendered.[3] The house concurred in the report of its committee; and a bill embodying its recommendations passed the first reading. But the bill was then referred to the next Assembly, and the pressing

[1] Sharpe's Correspondence, Vol. III, p. 134.

[2] *Ibid.*, p. 195.

[3] L. H. J., May 30 to June 1, 1768.

questions which by that time had arisen seem to have left little time for its further consideration.

But although that bill never became a law, and although those justices continued to the end without a salary, yet the strong executive ability of Governor Sharpe had been called into action. In 1766 he issued a new commission for that court in which five of the former justices were replaced by others. Of those five, Henry Hooper, chief justice, was a man well advanced in years, who had sometime before been both a justice of that court and a speaker of the lower house; James Weems had been chief justice of Calvert County; Daniel of St. Thomas Jenifer later became the lord proprietor's agent and receiver general; and the other two — John Beals Bordley and John Leeds — were of well-recognized ability. After the new commission had been issued, Sharpe wrote to the lord proprietor as follows concerning the justices of that court: "They are all, in my opinion, gentlemen of integrity and well attached to your Lordship's government, and as well qualified as any I know to administer justice unless some gentlemen of the law could be prevailed upon to relinquish their practice and sit on the bench, which can never be expected while the allowance made the provincial justices for their attendance is little more than sufficient to defray their expenses."[1]

Little complaint was ever raised about the want of ability and integrity in the justices of the several county courts. Although those justices received but very small pay, yet the greatest days in the year — the days of the largest gatherings of the people — were those on which the county court sat, and the honor of the occasion seems to have been sufficient to induce many of the ablest men of the county to accept appointment as justices. As already

[1] Sharpe's Correspondence, Vol. III, p. 334.

stated, many of the members of the lower house sat on the bench in those courts.

The most objectionable features, then, of the whole judicial system were these, that the justices of the provincial court were so poorly paid; that judges were appointed only during the pleasure of the lord proprietor; and that under the fee system in the chancery and the probate courts, suitors too often had to make an expensive journey to the city of Annapolis, or else pay double fees in order to have matters attended to within the county.

It was not until 1662 that legislative provision was made for a prison even at St. Mary's; but before Governor Charles Calvert had succeeded his father as lord proprietor, the General Assembly had directed the justices of each county to provide their county with a prison, a pillory, stocks, a whipping post, and a burning iron. Although there was much uncertainty as to what penal statutes were in force in the province, nevertheless, during the low industrial conditions of the first third of the eighteenth century, there was a frequent use of the pillory, the stocks, the whipping post, and the burning iron. Even in the more prosperous times that followed many a poor woman who had borne a bastard child and could not pay the fine of thirty shillings was tied to the whipping post, and given ten or twelve lashes on her bare back;[1] a man found guilty of blasphemy had his tongue bored through; those found guilty of manslaughter, of felony, and, in some cases of theft, were burned in the hand; a negro woman found guilty of perjury had both her ears cut off; one who had stolen a grindstone was stood in the pillory, and afterward tied to the whipping post and given thirty lashes; and a shoplifter was twice whipped and

[1] In the year 1749 corporal punishment for this offence was abolished.

twice stood in the pillory. Such are the examples of punishment actually inflicted after the year 1745.

The prisons also had many inmates, and their condition, although perhaps no worse than in the other colonies, is somewhat shocking to the more humane sentiments of the closing years of the nineteenth century. Although the lord proprietor, while visiting the province in 1732 and 1733, had but little to say to the Assembly, he did mention to that body his concern about the bad state of the prisons.[1] That there was cause for such concern is made quite clear by the report of a committee of the lower house submitted three years later, with respect to the prison at Annapolis. Thus, in part, the report reads: "It is a very inconvenient building, there being but two rooms in it, one on the ground floor and the other above. So there are no separate apartments for men and women. Such debtors as have the misfortune to be in prison, and who are kept generally in the upper room, are almost perished with cold in the winter, and in danger of being destroyed by stench which in the summer time comes from the lower room where the criminals are confined.

"Your committee have likewise been informed that several unfortunate persons who have been confined for debt in the said prison have actually died, some in the prison and others soon after their enlargement, and that many who have escaped with their lives have contracted such distempers during their confinement as have greatly impaired their constitution and rendered their lives very miserable. So that it may be truly said that the gaol at Annapolis besides being a place of restraint and confinement has also been a place of death and torments to many unfortunate people."[2]

[1] L. H. J., March 13, 1732.
[2] *Ibid.*, April 1, 1736.

Again, as late as 1769, the lower house represented to the governor to what a great extent prisoners were subject to the power of the sheriff, how some unfortunate people were reduced to the "anguish of a jail, and exposed to all the miseries of cold and wet, in the most inclement seasons of the year," and, in particular, how, by the order of a certain sheriff, a prisoner had been illegally, cruelly, and ignominiously scourged by the hand of a slave."[1] At the same time, the prisons were so insecure that it was a common occurrence for those deserving punishment to make their escape.

Nevertheless, from the year 1732, the General Assembly was by no means indifferent as to the condition of the prisons. In the act of that year for issuing £90,000 in paper currency, £500 for each county were appropriated for the building of county jails. The committee that reported the condition of the prison at Annapolis recommended the erection, as a prison, of a two-story brick building, sixty feet by twenty feet, with several windows, separate apartments, a fireplace in each, and a dungeon under the first story in which to confine malefactors. The governor was asked to remove the sheriff who had so maltreated the prisoner referred to above. Again, in the year 1732–33 the Assembly passed an act by which a prisoner for debt might gain his liberty in response to his petition to the Assembly and on condition that he delivered up on oath whatever property he had that was of the value of forty shillings or more. The number of petitions received by the Assembly, in accordance with this law, increased from year to year until, during the closing years of the proprietary government, from fifty to more than one hundred such prisoners were restored to liberty at every session of assembly.

[1] L. H. J., December 18, 1769.

No other controversy between the lord proprietor and the representatives of the people had a more important bearing on the development of the Maryland charter than did that over the laws according to which justice — especially in criminal cases — should be administered by the justices in the several courts. In the controversy over fees was involved the claim of the people as English subjects to a control over taxation. But in the controversy over the laws according to which justice should be administered, it was felt by the people that there was involved the right of the people as English subjects to inherit the liberty which had been or was yet to be secured by the whole body of common and statute law of the mother country.

During the first thirty years after the grant of the charter the tendency was more and more toward providing the province with a criminal code independent of the mother country, toward introducing only such English statutes and usages as all parts of the legislature could agree upon, and toward giving the judges unlimited discretion in all cases in which the laws of the province gave no direction. It was, however, the Assembly which had been elected during the Claiborne and Ingle rebellion, — known as the Hill Assembly, — but continued by Governor Calvert, that passed the act, in the year 1646–47, which tended most emphatically in the direction just indicated. The freemen of the next Assembly unanimously protested against the validity of that act on the ground that the body passing it had not been lawfully constituted. In addition to such an act, passed under such conditions, there was yet wanting only such government as was administered by the first Charles Calvert to teach the people to value more highly their English birthright, and so to open an agitation which had as

its object the extension of the whole body of English common and statute law to the province of Maryland.

In the second Assembly, — the first one of which any records are left, — it was agreed that the governor's commission gave him power as chief justice to proceed in all civil cases and in all criminal cases, not extending to life or member, according to the laws of England ; but that in criminal cases extending to life or member, he had no such power.[1]

In the third Assembly, — the first one that passed any acts that became laws, — bills were introduced which defined treason, felonies, and other great offences, and named the penalty for both treason and felony. But, like several other bills of that session, although they passed the second reading, for some reason which does not appear they failed to become laws. In their stead an act was passed which merely provided that in civil cases the chief justice and his associates should cause right and justice to be done according to the laws or laudable usage in England in the same or like cases ; while in criminal cases those justices were authorized to punish any offender as they thought he deserved.

One act of 1642 directed that in civil cases, for which no law or usage of the province provided, justice should be administered according to equity and good conscience, "not neglecting the rules by which right and justice used and ought to be determined in England in the same or the like cases." With respect to criminal cases, the same act directed that, in default of the laws of the province, all crimes and offences should be determined according to the best discretion of the court, provided that no person should be adjudged of life, member, or freehold, or to be outlawed or exiled or fined above one thousand pounds of tobacco

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, p. 9.

"without law certain of the province." Another act of the same year introduced into the province the law of Edward III with respect to treason, as well as the law of England for punishing any one convicted of wilful murder, and then declared that conspiring the death of the lord proprietor or the governor or attempting any premeditated violence against either of them, or being accessory to the same, should be punished by death and forfeiture of all the offender's lands, goods, and chattels.

Still other acts of that year provided that such offences as homicide, piracy, robbery, burglary, sacrilege, sodomy, sorcery, rape, and larceny should be determined by the judge as near as might be according to the laws of England. Any one found guilty of such offence might be sentenced to death, to burning in the hand, to loss of member, to loss of property, to be outlawed or exiled, or to be imprisoned for life. Any one guilty of striking an officer, juror, or witness in the presence of the court, or any one found guilty of perjury might be deprived of his right hand, be burned in the hand, be made to suffer any corporal punishment (not extending to life), or be fined as the court should think fit. Any one convicted of being drunk was to be fined one hundred pounds of tobacco, or, if a servant who could not pay the fine, he might be imprisoned or set in the stocks. Finally, any one convicted of profane cursing or swearing was to forfeit five pounds of tobacco. All these acts of 1642 were passed twice that year, and the last time their duration was limited to three years.

The first Assembly that met after their expiration was the Hill Assembly already referred to, and the only act on record that was passed by it was one concerning judicature, which was as follows: "All justice, as well civil

as criminal, shall be administered by the governor or other chief judge in court according to the laws of the province, and in defect of law, then according to the sound discretion of the said governor or other Chief Judge and such of the council as shall be present in court or the major part of them. And if the vote of the Council differ equally, the vote of the Governor or other Chief Judge in court shall cast it." Observe that the duration of this act was not limited; and although the contents themselves became very objectionable before 1689, yet during the few years immediately following its passage it would appear that the protest raised against its validity originated, not so much because of those contents as because of the far-reaching power claimed by the governor to determine what should constitute a lawful assembly.[1]

The Assembly, only two years later, without any apparent effort to secure to the people their right to English law, again took such action in criminal matters as the lord proprietor desired. It passed an act of unlimited duration, which provided that such offenders as should be convicted of making mutinous or seditious speeches tending to divert the obedience of the people from the lord proprietor or the governor should be liable to one or more of the following punishments: imprisonment during pleasure (not exceeding one year), fine, banishment, boreing of the tongue, slitting of the nose, cutting of one or both ears, whipping, or branding with a red-hot iron in the hand or forehead. One year later, also, acts of unlimited duration provided that such as should be found guilty of adultery or fornication should be punished as the justices saw fit, except that for such offences no one was to be deprived of life or member; they fixed the fine that should be imposed for drunkenness and swearing; and

[1] *Supra*, p. 196.

they directed that any one guilty of perjury, of striking an officer in the discharge of his official duties, or of striking an officer, a juror, or a witness in the presence of the court, should be nailed to the pillory, deprived of both ears, or made to suffer such other corporal punishment as the justices should see fit.

At the close of the year 1650, then, it appears that the laws of the province which directed the judges in criminal cases were principally those relating to mutiny, sedition, adultery, fornication, drunkenness, swearing, perjury, and forcible interference with officials while in the discharge of their duties. In other cases, one other law authorized the judges to act according to their "sound discretion."

Nearly the same condition existed twelve years later, when, during the first session of assembly under Charles Calvert, the lower house passed a bill in which — after it was stated that the allowance of great discretion to the judges had left too much room for corruption — it was provided that in all cases where the laws of the province were silent justice should be administered according to the laws and statutes of England if pleaded and produced. The upper house objected to the bill on the ground that county courts would not know when a law of England was rightly pleaded, and asked if all laws, however inconsistent they might be, were to be admitted into the province.[1] However, after the bill had been so amended as to leave each court to judge as to the right pleading and the consistency that might come into question, the bill became a law and was continued in force until 1674.

But in that year the upper house asked for a conference to draw up a list of such laws of England as should be deemed necessary to direct the judges of the provincial

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, pp. 435, 436, 448, 504.

court in criminal cases. The conference being agreed to, four members of the upper house met with six of the lower house. Yet, after the upper house had passed the bill embodying such a list, the lower house voted that it was unnecessary to consider it, since they conceived the laws of England ought to be esteemed and judged in full force and power in Maryland; and it availed nothing for the upper house to contend that as some of the laws of England would be inconvenient and that others of them were often repealed without the knowledge of the Maryland courts, dangerous consequences would necessarily follow from admitting that all the laws of England were in force in the trial of criminal cases. The lower house was not troubled by such argument, and after they had been told that the law of 1662 for the administration of justice according to the laws of England had to do with civil cases only, they asked to have it extended to criminal cases as well. Instead of making any such amendment, however, the law of 1662 was suffered to expire, and the status of 1650 was again restored.[1]

Nothing further was done with respect to the matter until seven years later, when a law was made for the trial of criminals which favored the view held by the upper house with respect to the inconvenience of the laws of England, but which must have met the approval of the lower house because it extended the jurisdiction of the county courts. The preamble first stated that, although the laws of England against thieving, stealing, and purloining were very suitable to populous countries, they were not so for a thinly inhabited province. It was there stated how, by following the laws of England, all or nearly all crimes above petty larceny were punish-

[1] Proceedings and Acts of the General Assembly, 1666 to 1676, pp. 347, 348, 349, 374 *et seq.*

able by loss of member, burning in the hand or forehead, by cropping of the ears, or even by death, and, therefore, could be tried only at St. Mary's in the provincial court. Lastly, it was pointed out how under such conditions the remoteness of many of the people from that court caused trials for small offences to become so tedious and expensive that prosecution was often forborne to the great encouragement of malefactors. Consequently, the law provided that the county courts should have jurisdiction over such criminal offences as thieving or stealing, where the value exceeded not one thousand pounds of tobacco. Those convicted of such offences were to be punished by whipping, or standing in the pillory, or both, and made to restore fourfold to the owner. But in case of a third offence of the same kind by the same party the provincial court alone was to have jurisdiction over it.

Although, in order thus to extend the jurisdiction of the county courts and to discourage stealing, English law was departed from, it became clear, three years later, in 1684, that the lower house was in no way disposed to make any concession of its former claim, in behalf of the people, to their right to the English laws. For, in that year, that house strove to have the perpetual law of 1646–47 so amended as to include the essential provision of the act of 1662 with respect to proceeding under certain conditions according to the laws of England. But while the bill for thus amending that law was before the upper house, the lord proprietor spoke to that body as follows: "It is not safe to have justice administered according to the laws of England, where the laws of this province are silent, without due regard had by the Governor, or Chief Judge and the Justices in court to the consistency of such laws of England to the constitution and present condition

of this assembly, it seeming to me unreasonable that since his Majesty of ever blessed memory out of the fulness of his royal power was graciously pleased to permit me with the consent of the freemen to make such wholesome laws as should be consonant to reason and not repugnant to the laws of England, I should by an act oblige and tie up the freemen of this province to be concluded by such laws of England as may ruin them, or at least be greatly injurious in several respects to them. I am therefore willing to admit this alteration, that where the laws of this province are silent, justice may be administered according to the laws of England, if the Governor or Chief Judge and the justices of my court shall find such laws consistent with the condition of the province. To a bill with this alteration I will set my hand, but not otherwise."[1] After listening to such words the upper house had sufficient excuse for rejecting the amendment; and the lower house at that time did not see fit to enter into any controversy with the lord proprietor about it.

The matter was before the Assembly but once more before the Revolution came, and then only incidentally, in the year 1688. But it was at that time introduced in the form of a resolution of the lower house — a manner of expression that was yet rare with that body, but one which after the first quarter of the following century became so formidable. The resolution was, "That this house do in the name of the whole province which we represent demand the benefit of the laws of England and of this Province as our inherent and just right, which we have hitherto been deprived of in not having the last writs of election and journals returned as desired by this house."[2]

[1] Proceedings and Acts of the General Assembly, 1684 to 1692, p. 38 *et seq.*

[2] *Ibid.*, p. 162.

With the establishment of the royal government it was inserted in commissions to the justices that justice should be administered according to the laws of England and of the province. The act of 1646–47, which allowed so much discretion to the judges, ceased to be in force. In its place was passed an act — similar to that of 1662, but less conditional — which directed that where the laws of the province were silent justice should be administered according to the laws of England.

But still this did not serve as a final settlement of the question. In 1696, when the lower house insisted on having a clause introduced into a bill for the establishment of religious worship which was worded so as to imply that all the laws of England extended to the province, the upper house would not pass it until some lawyers had given it as their opinion that the clause would not be of much force. Even then the crown disallowed it for the reason that the clause in question was of a different nature from that which was set forth in the title of the said bill.[1]

During the whole of the royal period, however, it was not denied that in general the laws of England did extend to the province. Neither was it denied during that period that there were among those laws some which did not extend thither. The difficulty lay in separating the one class from the other; and it is clear that the lower house felt that no agreement could be reached whereby the right of the people would not be encroached upon. Otherwise the matter would doubtless have been settled; for the low moral condition prevailing during the early years of the eighteenth century gave rise to a general desire for a clear understanding as to what laws were to be enforced. Thus, in 1706, the upper house claimed that judges were uncer-

[1] U. H. J., December 30, 1699.

tain as to whether the laws of England against bigamy extended to Maryland. Therefore that house desired the Assembly either to declare that those laws did extend to the province, or else pass some act against such an offence.[1] Again, in 1712, the committee on grievances represented that, because no act of assembly declared what English statutes were in force in Maryland, it was left to the discretion of the judges to admit or to reject them; that under such conditions an act of parliament was recognized in one court but not in another; and that consequently the people knew not what acts of parliament they transgressed or what were for their relief.[2]

In response to such complaints, the lower house, in 1706, resolved that when offences were not provided against by acts of the Maryland Assembly, a bill should be brought in declaring that acts of parliament had been and were still in force in Maryland. The house then ordered the chief justice of the provincial court, who was at that time chairman of the committee on laws in their house, to prepare a list of those laws of England that were to be considered in force in Maryland. After the chief justice had submitted his list and the house had pronounced it incomplete, that body appointed two others of its members to amend it. Perhaps such a list — made to meet the approval not of the other branches of the legislature but of the lower house alone — was intended as a sufficient guide to the judges.

At any rate, this was as far as the lower house seemed very anxious to go. For although, in 1712, that house resolved that it was highly necessary to pass an act for declaring what laws of England were in force in Maryland, the matter was referred to the next Assembly.[3]

[1] U. H. J., April 12, 1706. [2] L. H. J., November 6, 1712.

[3] *Ibid.*

Again, two years later, when, at the suggestion of the new governor, the upper house proposed that the Assembly should request some of the queen's council and others most eminent in the law to give their opinion as to what laws of England extended to Maryland, the lower house declined to join in such a request, saying that a matter of so great importance needed mature consideration, and hence ought to be referred to the next Assembly.[1] There the matter rested until seven years after the restoration of the proprietary government.

It was then a period of calm followed by a decade of intense agitation. In 1722 the young lord proprietor decided that no laws of England extended to Maryland except those in which, by express words, the dominions were mentioned. In that year, therefore, he vetoed an act of assembly which he thought seemed by implication to introduce all the English statutes into his province. At the same time he declared that whenever an English statute was found to be convenient and well suited to the conditions in the province, it could be introduced only by act of assembly. In other words, the people of Maryland were not to enjoy the benefit of English statutes in general without the lord proprietor's consent.[2]

Although the lord proprietor afterward stated that the most commonly received opinions of the best lawyers in England sustained him in his view of this matter, and although he was likewise sustained by the usage in other English colonies, later events showed that previous practice and disputation in Maryland had made it inexpedient for him to act in accord therewith. Without some express provision to the contrary, it was natural for the people of a province to claim that, if they were a free people, they

[1] U. H. J., June 28, 29, and July 1, 1714.
[2] U. H. J., March 19, 1722.

were entitled to the laws of their mother country. The people of Maryland were becoming exceedingly jealous of the lord proprietor's powers, and they felt that the interpretation of the charter, with respect to his powers and their rights, very largely depended on the settlement of this question. Previous to 1689 it had been the practice, in many cases, to administer justice according to the laws of England; and ever since 1692 the commissions to the justices had directed them to act according to the laws of England and of Maryland. Therefore, in view of these facts, after the people had so much strengthened their power in government during the twenty-three years of the royal period, it was unwise for this young lord proprietor to take a position on a vital question that was more far-reaching in its consequences than that taken on the same question by his predecessor in the year 1684.

The lower house was at once thoroughly aroused. The members of that body held that not to acknowledge the right of the people to those laws was to liken them to a conquered people such as were the inhabitants of Jamaica. In their intercourse by messages with the upper house, they were charged with casting invidious reflections, and of accusing that house of taking such a course as tended to the subversion of the constitution. In an address to the lord proprietor, this representative body said: "If the English statutes do not extend to the plantations unless by express words thither, then the Great Charter and all the statutes to the grant of your Lordship's charter are struck off at once from our rule of privileges; for they could not by express words be located hither since they were made long before Maryland was known or thought of. . . . But they do and ever did extend to Maryland. How could the people of Maryland enjoy the

privileges of Englishmen if they did not enjoy the English laws?"[1]

Furthermore, that house made its committee on grievances also a committee on courts of justice, and instructed it to watch the form of commissions and oaths of judges — especially those commissions which required justice to be administered according to the laws of England. From this time also, until the overthrow of the proprietary government, there were among the standing resolutions of the lower house the following: —

"Resolved that this province is not under the circumstances of a conquered country, that if it were the present Christian inhabitants thereof would be in the circumstances not of the conquered but of the conquerors. It being a colony of the English nation encouraged by the Crown to transplant themselves hither for the sake of enlarging and improving its dominions which, by the blessings of God on their endeavors at their own expense and labor, has been in great measure obtained. And it is unanimously resolved that whoever shall advance that his Majesty's subjects by such their endeavors and success have forfeited any part of their English liberties are ill wishers to the country and mistake its happy constitution."

"Resolved further that this province hath always hitherto had the common law and such general statutes of England as are not restrained by words of local limitation in them and such acts of assembly as were made in the province to suit its particular constitution as the rule and standard of government and judicature, such statutes and acts of assembly being subject to like rules of common law or equitable construction as are used by the judges in construing statutes in England, which happy rules have by his Majesty and his royal ancestors and by his Lord-

[1] L. H. J., October 21, 1723.

ship and his noble ancestors or some of them, been hitherto approved by the commissions of judicature to include directions of that nature to the several judicial magistrates unless those words have at any time been carelessly and casually omitted by the officers of this province that draw such commissions, that therefore whoever shall advise him or his successors to govern by any other rules of government are evil counsellors, ill wishers to his Lordship, to the present happy constitution, and intend thereby to infringe our English liberties, and to frustrate in great measure the intent of the Crown by the original grant of this province to the Lord Proprietor."[1]

Up to this time the form of the judge's oath had been prescribed by the governor and council. But in 1724 the committee on grievances and courts of justice reported that by the form of oath then in use, judges were made to swear that they would do "equal right to the poor as well as to the rich, according to their cunning, skill, and knowledge, and according to the precedents and customs of the province and acts of assembly." As such an oath was not in accord with the commissions of the same judges, nor with the recent resolutions of the lower house, that branch of the legislature sought to have the form of oath prescribed by an act of assembly, and thereby to bring about a more positive and definite determination of the question relating to the extension of the English statutes to Maryland.

Accordingly, at the request of the lower house, Daniel Dulany, the attorney general and also a member of the lower house, drew up the form of an oath by which judges were to swear that they would do equal right to the poor as well as to the rich, "According to the laws, statutes, and reasonable customs of England and the acts of assembly and usage of this province of Maryland."[2] When

[1] L. H. J., October 22, 1722. [2] *Ibid.*, October 13, 1724.

this had been laid before the upper house, that body claimed that by such an oath the judges would be bound to administer justice according to the laws of England, even in those cases in which such a course would cause "ruin to the good people" of the province. Therefore, they desired that the clause quoted above should be left out until the lord proprietor should have advised the governor and council as to whether it was consistent with the charter and agreeable to the constitution and general welfare of the province.[1]

But the lower house contended that the clause in question was in strict accord with the judges' commissions, which it but helped to explain. It held that with respect to this matter it was the duty of the council and the Assembly to give advice to the lord proprietor, and that until he had received such advice it was impracticable for him, a stranger at so great a distance, to give any advice to the governor and council. Then, in the conclusion of the same message, the lower house showed its independent spirit in the following words: "We shall never prostitute plain dealing to the servile force of compliment when our Country's good, your Honors, and our duty requires plainness. We shall rather choose to bear your censure if we incur it than be wanting in this part and in pursuit of this resolution. . . . We shall always think we best recommend ourselves to his Lordship by plain truths, though they should prove displeasing, and shall ever make it our choice rather to serve his Lordship without pleasing him than to please him without serving him should those offices ever unhappily be incompatible, and in the same manner we now treat your honors."[2]

Though the feelings of the upper house were deeply wounded by such messages, after the objectionable clause

[1] U. H. J., October 20, 22, 1724. [2] L. H. J., October 28, 1724.

in the old bill was altered so as to read, "According to the laws, statutes, and reasonable customs of England, and the acts of assembly and constitution of this province," it passed both houses.[1] But neither the governor nor the lord proprietor would assent to it, even after the upper house, in an address to the lord proprietor, had expressed more than doubt as to his position being tenable.[2]

Little more was done with respect to the matter until the year 1727. In the meantime the weak governor permitted the judges to take any oaths they saw fit, with the result that those of scarcely any two courts took the same.[3] So, after the committee on grievances and courts of justice had reported that under such conditions they were afraid the constitution of the province was liable to destruction, the lower house passed an oath bill couched in the same terms as those of the act which the lord proprietor had rejected two years before. This time the upper house objected to the bill not only because it was the same as the previous act from which the lord proprietor had already dissented, but because it provided for a too general introduction of the laws of England, and because it gave no preference to the acts of the Maryland Assembly when provisions contained in them differed from those of the statutes of England.[4]

But in response to the request of the upper house a conference was held, and thereby the following phraseology was agreed upon for the clause in question: "According to the directions of the acts of assembly so far forth as they provide, and where they are silent, according to the laws, statutes, and reasonable customs of England agreeable to the usage and constitution of this province."[5]

[1] U. H. J., November 4, 1724.
[2] *Ibid.*, November 5, 1725.
[3] L. H. J., October 14, 1727.
[4] U. H. J., October 17, 1727.
[5] *Ibid.*, October 18, 1727.

With this clause inserted the oath bill again passed both houses. The lord proprietor, however, was still alarmed by the resolutions of the lower house passed in 1722, and he felt, or pretended to feel, that he must be on his guard against subtle designs to encroach on his prerogative as well as on that of the crown. He, therefore, disallowed the act of 1727, and sent over a form of an oath in which the disputed clause read, "According to the laws, customs, and directions of the acts of assembly of this province, and where they are silent according to the laws, statutes, and reasonable customs of England as have been used and practised in this province."[1]

After the dissent, the reasons therefor, and the form of oath sent by the lord proprietor had been laid before the lower house, in 1728, the province became more thoroughly aroused than ever before. When the committee on laws had reported its opinion with respect to the form of oath sent by the lord proprietor, the lower house addressed the governor in the following words: "Although we are really concerned that there should be any difference between his Lordship and his tenants, yet it is the greatest consolation imaginable to us to know that they have given no occasion for a difference unless a firm attachment to the interest and welfare of their country, and a fixed resolution to hand the same rights and liberties which they have derived from their ancestors and the laws of their mother country and this province pure and undefiled to posterity be such. If these be causes of differences, we hope they will never cease. . . . We are at a loss to conceive how the laying of judges under the obligation of an oath to administer justice according to the laws that ought to be the rule of all their decisions could give his Lordship any apprehensions or oblige his

[1] L. H. J., October 3, 4, 1728.

Lordship to dissent to an act that has no other tendency nor can without the greatest violation of its sense and the intention of the makers of it contained in clear and explicit terms be otherwise considered but to oblige the magistrates to do their duty. . . . We have taken the form of oath mentioned in your Honor's speech into our most serious consideration, and we beg leave to acquaint your Honor that we conceive it to be so far from securing to us and our posterity the same measure of law and right which our ancestors and ourselves have ever enjoyed, that it is calculated (we hope contrary to his Lordship's intentions) to undermine all or the greater part of our most valuable privileges and to deprive us of the means of securing them, which we conceive to be the benefit of all the English laws, securative and confirmatory of the rights and liberties of the subject." Then it was pointed out that by the words, "as have been used and practised in this province," the people of Maryland might be deprived of the benefit not only of all the acts of parliament that should be made in the future, but also such of the acts of parliament already made as were not shown by the court records to have been already made use of in the province.[1]

Several days later the lower house passed another oath bill in which the part relating to the laws of England was as follows, "According to the laws, statutes, and reasonable customs of England agreeable to the use and constitution of this province." The upper house amended this by inserting the words "as are" before the word "agreeable." But when the lower house objected on the ground that "as are" and "as now are" were convertible terms, and hence too nearly like the form proposed by the lord proprietor, the upper house yielded; and for the third time an oath bill passed both houses.

[1] L. H. J., October 5 and 7, 1728.

Never before had the spirit of the lower house been more resolute than at this session. It was also demonstrated at this time that that body was possessed of an able leader in the person of Daniel Dulany, chairman of its committee on laws, who, in clear and cogent terms, had drawn up, not only the important report of that committee, but also the address to the governor. Moreover, the influence of this man was made to extend far beyond the walls of the assembly room. For, the month following the prorogation, there appeared from his pen a pamphlet entitled, The Right of Maryland to the Benefit of the English Laws. This pamphlet could not have failed to instruct and enlighten the people and thereby strengthen their cause, for like his other writings it was clear in expression, sound in reason, and convincing in argument.

Nevertheless, the lord proprietor again rejected the oath bill. And again, in 1730, — this time with but little discussion, — an oath bill passed both houses with the following provision relating to the laws of England, "According to the reasonable customs of England and the laws and statutes thereof as are or shall hereafter be enacted agreeable to the usage or constitution of this province."[1] A joint address from both houses was sent to the lord proprietor urging him to assent to this act.[2] But for the fourth time he dissented.

It is, therefore, not strange that in 1731, when the new governor, Ogle, arrived, he found the country "as hot as possible about the English statutes and the judge's oath."[3] It is not strange that all the judges of Calvert County had refused to take the oath, even though it but directed them to act according to the best of their skill and cunning. The conditions then existing also explain why it

[1] L. H. J., June 5, 1730. [2] U. H. J., June 16, 1730.
[3] Calvert Papers, No. 2, p. 82.

was that from that year all the members of the council were placed at the head of the list of justices for each county.[1]

This same year, for the fifth time, both houses passed an oath bill. But this time it did not pass the governor.

Finally, the next year, 1732, just after an election of delegates, Governor Ogle said to both houses, "I am firmly persuaded that his Lordship and the country aim at the same thing in relation to the oath of judge or justice, the end of both being the safety of the people and the security of their liberty and property, though they may differ a little in the means." Although he laid before the Assembly the same form of an oath as that sent over by the lord proprietor in 1728, yet he said that if that form was not agreeable, he desired assistance in representing such necessary alterations as might meet the approval of all parties. After listening to this speech the lower house passed a bill very much like that of the preceding year. But after the upper house had declined to pass it, that body requested a conference. The lower house granted the request. A conference soon agreed upon the form of an oath which, embodied in a bill, passed both houses, was signed by the governor, and assented to by the lord proprietor. In that bill which thus became a law and was continued in force to the end of the proprietary government, the long-disputed clause was as follows, "According to the laws, customs, and directions of the acts of assembly of this province so far forth as they provide, and where they are silent according to the laws, statutes, and reasonable customs of England as used and practised in this province."

This virtually left the case as it had stood in the year 1722; but as it was in that year the lord proprietor who

[1] Calvert Papers, No. 2, pp. 83, 90.

was thought to be endeavoring to destroy precedent, the success of the bill just mentioned was regarded as a triumph for the representatives of the people. Thereafter the lord proprietor continued to instruct the governor to pass no bill whereby the English statutes should be introduced in gross; while the lower house occasionally passed a resolution to declare some favorite English statute to be in force within the province.

However, when a criminal code is of an uncertain and indefinite character, crime must necessarily be encouraged. That this was the case in Maryland there is evidence in a message sent by Governor Eden to the lower house, after both he and his predecessor, Sharpe, had endeavored to have the Assembly determine just what penal statutes of England extended to Maryland. Thus, in part, he said: "Persons convicted on some English statutes having been discharged with impunity, because the extent of those laws was doubted, I am persuaded that the principle of apparent lenity not being as generally understood, as the impunity has been observed, the circumstance has produced a degree of flattering reliance that equal tenderness would be shown to offenders convicted on laws indubitably existent and operative; and thus the uncertainty I have taken notice of, by lessening the dread of punishment, has proved an insnaring encouragement to the commission of crimes."[1]

[1] L. H. J., October 25, 1771. The penalties that were imposed by acts of the Maryland Assembly, during or after the year 1715, were, principally, the following: a person convicted of embezzling, impairing, razing, or altering any will or record within the province, whereby the estate or inheritance or freehold of any person should be defeated, injured, or in any ways altered, was to forfeit all his goods, chattels, lands, and tenements, be set in the pillory for two hours, and have both his ears nailed thereto and cut from off his head; a person convicted of stealing that which was valued at less than one thousand pounds of tobacco was to pay fourfold, be put in

the pillory, and given not to exceed forty lashes; a person convicted of fornication was to be fined 30*s.* or six hundred pounds of tobacco; a person convicted of adultery was to be fined £3 or twelve hundred pounds of tobacco; a person convicted of wilfully burning a courthouse was to suffer death without benefit of clergy; a person convicted of blasphemy was for the first offence to be bored through the tongue and fined £20 sterling, or, if unable to pay the fine, be imprisoned for six months; for the second offence, to be stigmatized by burning in the forehead with the letter B and fined £40, or, if unable to pay the fine, be imprisoned for one year; and for the third offence to suffer death without benefit of clergy; a person found guilty of profane swearing was to be fined 2*s.* 6*d.* for the first offence and 5*s.* for every offence after the first; a drunkard was to be fined 5*s.* for every offence of drunkenness — if the swearer or drunkard was unable to pay the fine, he was to be put in the stocks or given not to exceed thirty-nine lashes; a person convicted of breaking the Sabbath was to be fined two hundred pounds of tobacco; a negro or other slave convicted of petit treason, or murder, or wilfully burning a house, might be senteneed to have his right hand cut off, hanged, head severed from the body, body divided into four quarters and set up in the most public places of the county where the act was committed; a person convicted of breaking into a shop, storehouse, or warehouse, and stealing from thence any goods to the value of 5*s.*, was to suffer death as a felon without benefit of clergy; a person convicted of cutting or destroying tobacco or exciting others to do so was to be fined £100 sterling and be imprisoned for six months; a person convicted of wilfully burning another's tobacco, or of aiding or abetting in such an offence, was to suffer death as a felon without benefit of clergy; a slave convicted of insurrection, murder, poison, rape of white women, or burning houses, was to suffer death as a felon without benefit of clergy.

CHAPTER IV

MILITARY AFFAIRS

If, besides being the recipient of powers similar in kind to those of an absolute monarch, the lord proprietor, as grantee of the soil, had been able out of his own private resources to provide the province with such essentials to self-preservation as military protection and the support of a civil service, it is difficult to conceive how those clauses in the charter which guaranteed to the people all their rights as English subjects could have been enforced, unless by the interference of the mother country. But as grantee of the soil the proprietor was thrown into too close a competition with the crown and with other proprietors to make it possible for him to obtain an income large enough to meet such ends and to supply his more private wants. The consequence was that for the essentials of self-preservation, the most potent forces in determining the development of the province, the lord proprietor was dependent on the people. Even the revenue from certain duties, which the people claimed had been appropriated for the purpose of defence, was taken by the lord proprietor for his private use; and such claims could but add force to the opposition. Then, too, as the neighboring colonies protected Maryland from the Indians, that very protection helped the people to refuse to place more than a very weak military organization within the control of the government. Finally,

during the fourth intercolonial war, when the crown asked for assistance, the lower house passed supply bills greatly prejudicial to the lord proprietor; and after the upper house had rejected those bills, the lower house did its best to represent the whole proprietary system in an unfavorable light before the crown.

At the beginning the lord proprietor made the governor his "Lieutenant General, Admiral, Chief Captain, and Commander as well by sea as land," gave him power to appoint and instruct all military officers under him, and instructed him to cause all men able to bear arms to be trained weekly or monthly. But unless the lord proprietor himself supported a standing force within the province, all else could avail little without an effective act of assembly to provide for a strongly organized, a well-equipped, and a well-disciplined militia.

There is little doubt but that the militia bill which was before the Assembly in the year 1637–38 was one of the bills first sent over by the lord proprietor. Among those bills which passed the second reading in the year 1638–39 was one for directing every housekeeper to keep every one of his household that was able to bear arms furnished with one serviceable gun, one shot bag, one pound of good powder, four pounds of shot, a sword, and a belt. This same bill authorized the captain of St. Mary's and the captain of Kent Island, or any of their sergeants, to demand once a month at every dwelling house a view of arms and ammunition, authorized them to impose a fine for every default, and to furnish persons with whatever was found wanting at any price not above double the real value. This bill also provided that upon any alarm every householder of each hundred, having in his family three men or more able to bear arms, should send one man completely armed for every such three men and two for every

five, and so proportionably to such place as should be appointed by the commander or proper officer of the hundred.[1] But this bill did not become a law, and in its stead was passed an act that authorized the two captains, at the discretion of the governor, to use and command all power which they deemed necessary for the safety and defence of the province.

With ample authority, therefore, rather than strong support, the governor, advised by his council, was left free to organize the militia as he saw fit. Some time in the first years of the colony he appointed a captain for St. Mary's and a captain for Kent Island; and either he or the captain appointed a sergeant for each hundred. A little later he placed the mustering and training of the militia of the whole province under the general supervision of a mustermaster general, for whose support, until 1671, the Assembly caused a tax of four pounds of tobacco per poll to be levied. But from about the year 1661 the militia of each county was placed in charge of a colonel under whom were majors, captains, lieutenants, and sergeants. On some occasions, when war was threatening, a major general was appointed for each shore. The office of mustermaster general became extinct, probably before the year 1689.

In the early commissions, the captain, with the aid of the sergeants, was authorized by the governor to muster and train the militia as often as he saw fit; also to view at every dwelling house the arms and ammunition, and to fine anybody found to be in default with respect to the same; and, finally, to execute martial law for the suppression of mutiny, and in case of sudden invasion of the Indians to make war against them.[2]

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, p. 77 *et seq.* [2] Proceedings of the Council, 1636 to 1667, pp. 75, 86.

But how strongly inclined the people were to keep military power within their own control, is seen from the work of the Assembly in 1649. An act made that year provided for a meeting of the freemen of each hundred at some place within their hundred on the three last days of each month from April to September inclusive. At those meetings such ordinances were to be passed as those present deemed necessary for the defence of their hundred during the month following, and the commander of the hundred was to see that those ordinances were put into execution.

Not until the proprietary government had been temporarily superseded by the government of the Puritan commissioners did the General Assembly pass a militia act. But even by that act, although all persons between the ages of sixteen and sixty were required to supply themselves with serviceable arms and sufficient ammunition of powder and shot, though the captain and other officers of each county were directed to view the arms and ammunition, and each captain was to be authorized to train the militia, there were no specific directions given and no penalty whatever was named for disobedience.

Finally, however, in 1661, a more adequate militia act was passed. Its preamble stated that, for want of a necessary law, training had been greatly neglected even in time of danger. This act authorized the colonel, lieutenant colonel, major, and captain to enlist such persons between the ages of sixteen and sixty as they saw fit, provided only that a uniform proportion was kept between those enlisted and the entire population of any district. It authorized the same officers to train the militia four times a year, and even more than four times if the governor and council should see cause for so ordering. Nothing was said in the act about viewing arms

and ammunition at each dwelling house, but everybody summoned to the place of training was to appear there with gun and powder. And the act aimed at securing obedience by providing for the imposition of fines and in certain cases for imprisonment. In 1678 the act was so amended as to empower the governor and council to make levies on the people whenever it was necessary to meet the payment of small charges; but the whole amount so levied was not to exceed fifty thousand pounds of tobacco in any one year. At the same time, also, special provision was made in the act for a company of horse in each county. Otherwise the act of 1661 was continued with but little change down to the Revolution of 1689, and even upon the establishment of the royal government essentially the same law was continued.

The training of the militia under this law was not satisfactory to the government. From 1697 to 1701 the governor and the upper house again and again urged the lower house to take some action toward providing the province with a more serviceable militia. Recommendations were made for giving the militia officers greater power, for appointing and paying a master adjutant to train the militia six times a year, and for requiring every six taxables to furnish one well-equipped footman, and every nine taxables one well-equipped trooper.

In 1696 the lower house referred such recommendations to the consideration of the committee on laws. Although that committee reported as their opinion that the execution of what had been recommended would tend much toward the regulation of the militia, it nevertheless held that it was not advisable in such a time of danger from the Indians to change a law with which the inhabitants were so well acquainted. It proposed that a copy of the recommendations should be submitted to the people of

every county, who, after consideration thereof, should instruct their delegates to the next Assembly.[1] The house concurred in the report of its committee and stated that, considering the great deserts between the inhabitants and the enemy, it thought the present militia, if well armed, would be sufficient for defence. It would seem that the representative body was well sustained by its constituents, for that same body gave little attention to further messages from the other branches of the legislature with respect to the militia until five years later.[2] Even then the committee appointed for considering the proposed changes in the old militia law reported against such changes on the ground that the defect was not with the law, but with the execution of it; and again the lower house concurred with the report of its committee and declared to the upper house that the constitution of the province would admit of no better law.[3] Little further discussion arose during the remainder of the royal period. In 1715 the old law was continued by an act, the duration of which was limited to three years and to the end of the next session of assembly after the expiration of the three years. In 1719 it was likewise continued. In 1721 the upper house complained that, for want of power in the captains to fine the disobedient, several of the chief militia officers were discouraged from performing their duty by being rather despised and affronted than respected and obeyed by private sentinels.[4] But in its reply to this complaint the lower house gave its opinion that the militia law provided a sufficient punishment. Later messages from the upper house concerning the matter were likewise of no avail until the next year, after the governor had made his plea, the lower house was persuaded to pass an

[1] L. H. J., June 4, 1697.
[2] *Ibid.*, March 26 and November 2, 1698.
[3] *Ibid.*, May 13, 1701.
[4] U. H. J., July 22, 1721.

act which authorized any two field officers to adjudge fines and award execution for not appearing at musters. The last provision of this act was that the old militia law, which was about to expire, should be revived and continued in full force; and, consequently, as the new act was unlimited as to its duration, the old law was at this time made perpetual.

But the new disciplinary measure did not serve to bring about such training as was desired; and during the year in which the controversy over English statutes was put to rest, the governor again asked that the militia officers might be given sufficient power to oblige men to appear at musters and learn the necessary discipline.[1] For one year the governor and council, out of the duty of threepence for arms and ammunition, paid an adjutant to train the militia; and the lower house was urged to pass a bill to provide for the payment of such an officer. The next year, also, during his presence in the General Assembly, the lord proprietor himself recommended amendments to the militia law.[2] The lower house responded by passing another supplementary militia act. Yet that act went no further than to provide for a distribution of arms and ammunition and to impose insufficient penalties for misbehavior at musters. Further urging by the governor, in the year 1740, resulted in nothing.

In 1744, during the third intercolonial war, the governor received instructions from the home government to put the militia in the best condition possible. He accordingly pointed out to the Assembly that the old law was extremely defective, and declared that it was absolutely necessary to make the militia more serviceable. The lower house thereupon appointed a committee to consider what was necessary. And in its report that committee recommended that the power of the captains be increased; that conviction for non-attendance at musters be made

[1] U. H. J., August 3, 4, and 5, 1732. [2] *Ibid.*, March 16, 1732–33.

easier; that the constable of the hundred be enabled by a warrant under the hand of any two field officers to compel a delinquent to appear and answer the complaint of his officers; and that the field officers be obliged to hold a court-martial at least once a year on a certain day at the courthouse of each county.[1]

But the house did nothing with the recommendation of this committee. Two days after the report had been presented, Governor Bladen laid before the house a paragraph of a letter from Philadelphia, together with a message in which he said that he hoped the example of a neighboring colony, which, from its principles of religion, had long persisted in refusing to provide for its own defence, but now so thoroughly convinced of its danger that it appeared to be actuated by the principles of self-preservation, might have some effect on those whom he was addressing. But whether the representatives of the people of Maryland would act upon the same principles or rather choose to distinguish themselves from all the neighboring colonies, and indeed the rest of mankind, by neglecting the necessary means of their safety, he left it to their judgment and conscience to decide.[2]

The lower house gave this message little attention except to resolve that it contained oblique and unkind reflections on the conduct of its members. Yet the executive pursued the unwise course still further. For many years the governor and council had made no use of that clause in the militia act which empowered them to levy a sum not exceeding fifty thousand pounds of tobacco in any one year for the payment of small charges. But now, after the prorogation of this Assembly, they proceeded to levy a tax of one pound of tobacco per poll, for which there was apparently no other motive than mere spite

[1] L. H. J., May 31, 1744.

[2] *Ibid.*, June 2, 1744.

against the lower house. Nothing could have more effectively defeated the attempt to obtain a better militia law than such an abuse of power. That abuse produced a still greater effect. From that time the lower house not only refused to amend the old militia law, but pretended that that law had expired in the year 1725. They said the law of 1715 was a temporary one, that the law of 1719, which continued it, was also temporary, and that, therefore, the act of 1722, which both amended and continued it, was not intended to continue it for a longer time than had the acts of 1715 and 1719. Although this could have been nothing but a pretence, such an attitude of the lower house did not fail to make the militia force still weaker than it had been.

The concluding sentences of the governor's last message in the controversy at this time are sufficient to show the spirit that had been awakened. He said: "It is really a pity your earnestness to deprive the province of a perpetual law for ordering the militia in its defence, and to divest the government of a power to raise fifty thousand pounds of tobacco in a year, should engage your house to use so much time and paper in order to confound the sense of yourselves and everybody else on so plain a point as the perpetuity of the present militia law, . . . I am determined with the advice of the council to put the same in execution in all its parts as often as occasion requires, till I am satisfied by some better reasons that the law of 1715 has been expired ever since 1725, contrary to the common sense which I am master of."[1]

During Governor Sharpe's administration, even in the midst of the fourth intercolonial war, the lower house continued to intimate that the law was not in force; and the several attempts of even a man like Sharpe to obtain a

[1] L. H. J., September 28, 1745.

militia law like those in force in the northern colonies found little favor. In 1756 Sharpe wrote to Secretary Calvert as follows: "I am sure the situation of affairs in America, and the circumstances of this and the neighboring provinces in particular, make a good militia law exceedingly expedient. But the people in general are very averse to every law of that sort, and their sense, I doubt not, will determine their Representatives. Mr. Hammond, who is a leading man in the house, says he thinks it would become them to recommend it to the people to provide themselves with arms and to learn to use them, but that every step farther than that would abridge the liberty to which as Englishmen they have an inviolable right." [1]

Not until the people had come to feel their supremacy over the lord proprietor, not until it had become possible to keep a militia force under their own control, and when, also, it was felt that such a force was needed to resist the oppression of the mother country, did the people of Maryland come to think that a strong militia force would be a protection and not a hindrance to the cause of liberty. But when that time did come they were as enthusiastic in its favor as they had formerly been determined against it. Thus, in 1774, the provincial Congress was unanimous in the following resolution: "That a well-regulated militia, composed of gentlemen, freeholders, and other freemen is the natural strength and only stable security of a free government, and that such militia will relieve our mother country from any expense in our protection and defence, will obviate the pretence of a necessity for taxing us on that account, and render it unnecessary to keep any standing army (ever dangerous to liberty) in this province. And, therefore, it is recommended to such of the said inhabitants of this province, as are from sixteen to fifty

[1] Sharpe's Correspondence, Vol. I, p. 491.

years of age, to form themselves into companies of sixty-eight men; to choose a Captain, two Lieutenants, an Ensign, four Sergeants, four Corporals, and one Drummer for each company; and use their utmost endeavors to make themselves masters of the military exercise; that each man be provided with a good firelock and bayonet fitted thereon, half a pound of powder, two pounds of lead with a powder horn and bag for ball, and be in readiness to act on any emergency."[1]

In accordance with that resolution it was not long before companies were formed in the several towns and hundreds. A royalist observer wrote at the time as follows: "The inhabitants of this province are incorporated under military regulations and apply the greater part of their time to the different branches of discipline. In Annapolis there are now two companies; in Baltimore, seven. And in every district of this province the majority of the people are actually under arms. Almost every hat is decorated with a cockade."[2]

If the defective laws for training the militia were a source of weakness to the executive, the meagre supply of arms and ammunition and the nature of the controversy arising with respect thereto not only directly increased that weakness, but added to the hostility between the lord proprietor and the people. From the first, the requirements of the governor that everybody able to bear arms should provide himself with arms and ammunition were not well complied with. In 1664 it was stated, in the preamble to an act of assembly, that the province was in great danger because of the negligence of its inhabitants in not providing themselves with sufficient arms and ammunition. The same act, therefore, provided for levying a tax of one thousand pounds of tobacco in

[1] *Maryland Gazette*, December 8, 1774. [2] Eddis, p. 216.

order to help remove the danger. Again, two years later, the lower house voted that for protection from the Indians it was necessary that each county should have a magazine supplied with certain arms and ammunition; and steps were taken toward that end.

The next action in this matter was taken in 1671, when, as a result of shifting the responsibility for a supply of arms and ammunition from the people to the lord proprietor, a cause of complaint against the latter originated. For it was in that year that the act was passed for giving the lord proprietor the two-shilling duty on condition that he accept tobacco at twopence per pound in payment for his quit-rents, and on condition, also, that one-half the duty "be employed toward the maintaining a constant magazine with arms and ammunition for the defence of the province and defraying other necessary charges of government."[1] On two occasions it appears that the lord proprietor, Cecilius, urged his son and governor, Charles, to make the needed provision for arms and ammunition. In his first reply the governor simply stated that he would do so if sufficient provision could be made out of the quit-rents. But one year later he wrote that he had sent for 250 muskets, and gave his assurance that he would soon take such action with respect to the matter that the lord proprietor would have no reason to chide nor the people to complain.[2] And by 1678 a small supply had been provided for each of the several counties.

But the act for the duty of two shillings reduced the value of quit-rents nearly one-half, and therefore gave the government no liberal support. Moreover, under the conditions then existing, Charles Calvert was by no means the man to make unnecessarily large expenditures for such means of defence. A growing opposition availed itself

[1] *Supra*, p. 79. [2] Calvert Papers, No. 1, p. 290.

of every opportunity to make charges against him. Consequently, at the time of Bacon's rebellion in Virginia, it was a general complaint in Maryland, as well as in Virginia, that provision for defence had been grievously neglected ;[1] and after the Revolution of 1689 one of the charges against the lord proprietor was that he had not provided each county with a public magazine sufficient for defence, as he was required by law to do, and paid therefore "at least £2000 sterling per annum."[2] But the unreasonableness of the people could not have been less in degree than the oppression of the lord proprietor, if they expected him to make any large expenditure for arms and ammunition out of his income from that duty.

Upon the establishment of the royal government the Assembly gave one-half of the two-shilling duty for the governor's support, while for a fund for arms and ammunition the same Assembly endeavored to appropriate a part of the lord proprietor's tonnage duty. But the crown soon directed that the proprietor should not be deprived of that duty.[3] A few years later, also, the crown further directed that threepence of the twelvepence duty for the governor's support should be used for the purchase of arms and ammunition, and that fund, thus fixed by order of the crown, remained unchanged to the end of the period of royal government.[4]

Two years after the restoration of the proprietary government, the new revenue law for the support of government and the payment of quit-rents made express provision for the threepence duty for arms and ammunition. That duty was therefore raised until the temporary revenue law of 1717 expired in 1733. Yet, in 1729, the lower house began to make inquiry into the applica-

[1] Proceedings of the Council, 1667 to 1687–88, pp. 134–136.
[2] *Ibid.*, 1687–88 to 1693, p. 216. [3] *Supra*, p. 90. [4] U. H. J., May 12, 1701.

tion that was made of it; and in 1732 the same house, by a vote of twenty-two to eighteen, resolved that the said duty should be applied as the governor and the two houses of Assembly should think fit.[1]

After the temporary revenue law had expired in 1733, revenue for the support of the governor was collected according to the perpetual law of 1704. As threepence of the twelvepence under the perpetual law had been used for the purchase of arms and ammunition, the question may arise why the lower house did not at this time insist that the same proportion of that duty should again be used for the purpose. But it should be remembered that at the time the perpetual law was suspended the hogsheads were enlarged enough to cause the duty for the support of the governor to be increased threepence; and that the perpetual law was in force had not yet been denied.

The question of passing an act for no other purpose than to continue to raise the threepence duty therefore stood at this time on its own merits. But the lower house found that a large amount raised by this duty had not yet been expended; and so, in spite of the governor's urging, no bill was passed in 1733 for continuing it. One year later, however, the governor again laid the matter before the Assembly;[2] and this time the lower house passed a bill which directed that the money should be disposed of by the governor and both houses, instead of by the governor and council. But when the upper house objected to such a provision for disposing of the money, the lower house yielded, and the bill became a law.

The lower house nevertheless continued to call for accounts, and to examine into the condition of arms on hand, and by 1739 several other disputes had caused that house to become quite unreasonable. In that year it

[1] L. H. J., August 5, 1732. [2] U. H. J., March 20, 1734–35.

began to contend that the lord proprietor was not justly entitled to the fourteen-pence tonnage duty, that the perpetual revenue law of 1704 was no longer in force, and that, if it were in force, threepence of that duty should be used for the purchase of arms and ammunition.[1] Moreover, the amount on hand had increased; and the house at least pretended that a considerable sum was unaccounted for. As a consequence of these several conditions, after the governor had stated that he thought his accounts must have been satisfactory, after he had in the most earnest manner urged the renewal of the law, and after the upper house had endeavored to show how the passage of such a bill, at a time when war was threatening in Europe, so nearly concerned the honor and preservation of Maryland, the lower house gave to the upper house its view of the matter in the following words: "If the honor and preservation of this part of his Majesty's Dominions be so nearly concerned as you are pleased to say, in the threepence act for arms and ammunition, we cannot see how those who have had the disposition of the money hitherto raised for that use can acquit themselves for not applying it to the purposes for which it was raised. The uncertainty as to whether there should be peace or war in Europe having subsisted for some time, and there now being the sum of £2250–11–2 sterling and £34–13–7¾ current gold in bank, arising from that duty, besides upwards of £2500 sterling unaccounted for in any manner, we have, as we think, justly concluded that his Excellency and your honors have been of the opinion either that arms and ammunition were useless to the province, or that there is a sufficient stock already provided, otherwise that you would never have neglected so essential a part of your duty as in the case of laying out that money, had

[1] L. H. J., June 9, 1739.

you thought it necessary for the safety of the people. . . . And further, inasmuch as his Lordship hath possessed himself of a considerable annual sum, amounting to at least £2200, arising on the shipping trading into and staple export of this province, without any law that appears to us to levy the same, and which, were it legal to raise, was intended to support the government here, and particularly to supply a magazine with arms and ammunition, we do not think the revival of that law at present necessary." [1]

But the duration of the existing law respecting arms and ammunition was to terminate only with the end of the next session of assembly; and a meeting of the Assembly was not counted as a session unless at least one act was passed. The upper house, therefore, as a council of state, advised the governor to withhold his assent from every bill passed by the two houses at this meeting. Hence, contrary to the will of the lower house, the threepence duty continued to be collected; and the governor attempted to justify the means taken to win the victory by charging the lower house with acting from low motives, and contrary to the desires of the better element of the people. Thus, just before proroguing the Assembly, he answered the charges of the lower house with respect to the money in the bank and the money unaccounted for in such reproachful words as the following: "I cannot help saying that these are such low and mean aspersions, and so absolutely without the least foundation, that they must either be allowed to manifest a strong inclination to throw dirt or a desire to give some color to the violence of your proceedings, which you cannot but already begin to see has given offence to many of the best and wisest men in the Province, who I am persuaded will be daily more and more

[1] L. H. J., June 8, 1739.

convinced that violent personal malice and hatred have been stronger motives to your said proceedings than any true protestant English spirit for the good of your country."[1]

The great majority of the people, however, undoubtedly supported the action of their representatives. Although the next year those representatives passed a bill for continuing the threepence duty, yet that bill called for very strict accounts. It also provided that money remaining in the hands of the treasurers after a fixed time should be paid out as both houses might direct; and it provided that the act should continue only until September 29, 1741.[2]

The upper house rejected this bill. Thereupon the lower house — after pointing out that the principal reason for that rejection was because the bill had not been made to continue for a certain time and to the end of the next session — proceeded to tell how dear experience had taught their body the ill consequence of making money laws to terminate with a session. They said that the effect of such a termination was to make a temporary law perpetual, or, at least, to make it continue so long as any one branch of the legislature desired it. They complained that, because the existing law respecting arms and ammunition contained such a provision for its termination, the province had been deprived of a session for nearly three years; that during those years the Assembly had been called and prorogued or dissolved from year to year, the country burdened with immense charges and oppressions daily experienced without an opportunity for redress; and that the purpose of the upper house in continuing that law had been to drive them into things which they thought inconsistent with the interest of the province. Furthermore, the lower house again made mention of how, during the royal government, by order of the crown, one-fourth of the duty at this time

[1] L. H. J., June 11, 1739. [2] U. H. J., May 7, 1740.

being collected for the governor's support was then used for arms and ammunition. They pointed out how the British Parliament secured its annual sessions by giving for only one year at a time the duty most essential to the support of the government. Then they asked: "In our present situation where his Lordship takes the money for the support of government under color of a perpetual law, and settles officers' fees by ordinance or proclamation, what have the people left them but this one bill to procure them frequent assemblies? . . . And should ever the Province be so unhappy as to be ruled by a Proprietary or Governor who should aim at arbitrary power and oppress the people, what remedy could they have when no means are left them of procuring assemblies? How could aggrievances be inquired into, oppressions and extortions suppressed, new laws made or old ones revived? Would not such a Proprietary or Governor, as he has nothing to ask of an assembly, keep the people always without one?" Finally, these representatives of the people said to the representatives of the proprietor, "Our duty obliges us to take care of the Province in every respect, and not while we are making provision against enemies abroad leave it a prey to those at home" and "We are, while we have the honor to represent the people of Maryland, firmly determined never to assent to any law of that kind with such an indefinite determination as you contend for, and we hope when we are discharged of the trust they will always find representatives who shall firmly adhere to the same just resolutions."[1]

Both houses at last agreed to a conference, and at that conference it was arranged that the duty for arms and ammunition should be sixpence per hogshead, and that the duration of the law should be limited to three years.

[1] L. H. J., May 17, 1740.

But a new quarrel then arose. The upper house refused to proceed to business until the lower house had sent up the supply bill for his Majesty's service and the bill for arms and ammunition, both of which had been agreed upon in conference. But the lower house feared that if those two bills were first passed, the upper house might then so amend some of the bills that were favorites with the people as to fix their duration to a certain day only, and not to the end of a session as formerly. The upper house held that the most important bills should have precedence, while the lower house held that those bills which had already been before the upper house for three weeks should have precedence. In this quarrel the governor took a part. Both the governor and the upper house felt that a concession to the lower house in this matter would have the plain tendency to render the upper house not only a ridiculous but a useless branch of the legislature, since it would make their submission absolutely necessary to whatever the lower house should be pleased to exact from them. At the same time the lower house passed the following resolution: "That the upper house, keeping before them the bills sent from this House longer than the usual and reasonable time upon any pretence whatsoever, is a dangerous innovation introductive of many inconveniences, and of altering the usual method of proceeding in assemblies; and that threatening this house with the fall of those laws usually revived and reënacted in which the public utility of the inhabitants is so essentially concerned till this house comply with their unreasonable demands, is using compulsory means with this House to give up the rights and privileges of the people, and tends to the making themselves absolute and the Delegates of the people useless."[1]

[1] L. H. J., June 5, 1740.

Before this assembly was prorogued the lower house passed the supply bill for his Majesty's service in carrying on the third intercolonial war. As neither the upper house nor the governor dared to reject that bill, this meeting of the Assembly of the year 1740 was made a session, and thereby the law of 1734 for arms and ammunition expired. But with it also expired several of the laws that were favorites of the people, and no new laws were made to take their place.

The Assembly met again that same year, and the dispute as to which bills should have precedence again arose. After sitting two weeks without any prospect of an agreement, the lower house asked the governor to prorogue the Assembly. Whereupon the upper house yielded so far as to send down some of the bills which it had been withholding. But that house still retained the bill for circuit courts and a bill for officers' fees. This drew from the lower house to the governor a long message in which, after reviewing the case from the beginning, that body said: "If the above be the true state of the case, who can blame the Representatives of a free people from guarding against a practice which in its consequence must affect their rights in their tenderest parts; which must render the House of Delegates a name only, or mere shadow by depriving them of that freedom of action, that share in legislation which by their Charter and Birthright the people are entitled to, which must prostitute them to the sole power of an Upper House and subject them at all times to the absolute will of their Governors. . . . We therefore conclude with the plainness your Excellency desires by telling you that we will not introduce the practice of bargaining what as British subjects the people ought to enjoy; that the bill for 6*d*. per hogshead has had its first reading, but that we are determined to proceed no further in that or any other

money bill that may tax or burthen the country (those relating to his Majesty's service only excepted) until we have a regular return of the long-accustomed method of proceeding from the other Branches of the Legislature with this House, and of all our useful and necessary bills."[1]

After this message had been delivered, the upper house sent down as not passed the two remaining bills. Although this was a complete concession as to parliamentary procedure, it is needless to say it did not satisfy the lower house. No further progress was made toward reaching an agreement at this session.

At the opening of the session in the following year the government again urged that provision be made for a supply of arms and ammunition, and after the lower house had passed the favorite expired bills it passed one for military stores. But that bill directed that the duty to be imposed should be paid not to the treasurers as formerly, but to the speaker of the lower house, who with the money arising therefrom should purchase such arms and other warlike stores as the governor should direct. Furthermore, the bill provided that, if the money were not laid out by the direction of the governor before the next session of assembly, then it should be applied for defraying the public charge as the lower house might direct. In that bill was also this provision; namely, "Provided that nothing herein contained shall be deemed or construed to extend to prejudice or take away any right or claim which the people of this Province have to any money heretofore or now levied by the Proprietor under color of the act of 1704 for the settlement of a general revenue." And, lastly, the act was to continue only until September 29, 1742.[2] Of course the upper house did not pass the bill.

In order to defeat the lower house in this contest, and

[1] L. H. J., July 25, 1740. [2] *Ibid.*, June 18, 1741.

prevail upon that body to pass a bill which should restore to the governor and council their former power in the purchase of arms and ammunition, the lord proprietor appointed a new governor and instructed him and the council to continue to withhold the bill for circuit courts, the bill for the recovery of small debts, and the bill for the relief of poor debtors till the bill for arms and ammunition should pass the lower house in an acceptable form.[1] It was on this occasion, also, more than at any other that the lord proprietor endeavored to make felt his power as territorial lord by authorizing the governor to pass the bill for the payment of quit-rents on terms favorable to the people, provided the lower house passed an acceptable bill for arms and ammunition.[2] Then, too, the third intercolonial war being in progress, after the home government had directed that the province should be put in the best possible condition of defence, and when the upper house claimed that danger from the Indians was threatening, the governor and council, in an address to the crown endeavored to throw all the blame on the lower house. Thus in that address they said in part: "We your Majesty's most dutiful and loyal subjects, the Lieutenant Governor and Council of the said province, most humbly beg leave to approach your Majesty with this representation of the difficulties and obstacles we have met with in our endeavors to comply with these orders (to put the province in the best posture of defence) from those who being the representatives of the People in Assembly either from a mistaken notion of their duty to your Majesty and the true interest of their Country, or from private and popular views inconsistent with both, have for some years past made opposition and clamors against this government and the administration thereof their principal rule and direc-

[1] C. R., March 26, 1743. [2] *Supra*, p. 84.

tion in all their consultation and debates. . . . The Lower House of Assembly grasping at power in every instance ever since the year 1738 under various pretences have refused to raise that fund which has been from time to time continued for above twenty years for supplying this Province with arms and ammunition in such manner as hath been always before practised, and in the management whereof no just objection could be made to the Governor and Council, with whom the disposition was always intrusted for the use to which it was appropriated by the act. But when the present Lower House was this session pressed by an argument of the alarming attempt of an invasion of Great Britain, and the then imminent danger of a war with France, as well as by the order and direction of their Excellencies, the Lords Justices, they passed a bill for a provision of arms and ammunition for defence of the province almost of the same import with two bills in the two preceding sessions, and which they knew had been before rejected, since they could not be passed without a most severe reflection on the Lord Proprietary and Government."[1]

But in return for such a representation to the crown, the lower house more and more pressed their objection to the lord proprietor's taking to his own use, under color of law, the twelvepence duty — a part of which, they continued to say, when legally raised, had been applied to the purchase of arms and ammunition. The bill for the payment of quit-rents was not sufficiently popular to be of much force ; and after the governor had declared that the bill would be lost unless a fund were provided for arms and ammunition, the lower house by a vote of thirty-two to eighteen resolved, in effect, to do nothing further with respect to the desired fund. The new governor, Bladen,

[1] C. R., June 5, 1744.

was much less qualified to engage in such a contest than was the old governor, Ogle, and the lower house prized victory in this contest far more highly than they did those three favorite laws.

Moreover, by 1746, instead of support coming from the crown to the lord proprietor and his government, some members of the government party seem to have suggested to the lord proprietor that it might be advisable to accept for a time the bill for arms and ammunition in the form offered by the lower house, lest, otherwise, the people should justify themselves to the crown.[1] In response to that suggestion the lord proprietor expressed a readiness to grant to the lower house a share in the disposal of the money that should be raised by the bill in question. But the war ended before any concession was made; and in the year 1747, when Ogle again became governor and the inspection act was passed, the good feeling was so general that the lower house passed the bill in nearly the same form as that in which it had formerly existed as a law.[2] However, its duration was limited to one year, and after reviving and continuing it but once it was suffered to expire September 29, 1749. When the new governor, Sharpe, was appointed, he was instructed to revive the old practice of refusing to pass the three bills above mentioned until the lower house should pass the bill for arms and ammunition. That instruction was, however, this time so conditioned as to allow the governor and the upper house to pass those three bills without the bill for arms and ammunition if they thought it "expedient and absolutely necessary for the benefit, utility, and well being of the inhabitants of Maryland."[3] And in accordance with

[1] Dulany Papers; Gilmore Papers. [2] *Supra*, p. 117.

[3] C. R., October 17, 1753; Calvert Papers, private instructions; see also Sharpe's Correspondence, Vol. I, p. 12.

this condition those three bills were passed without that for arms and ammunition ever again becoming a law.

In the controversy over this one bill, therefore, the upper house learned how useless it was to try to drive the lower house by attempting to deprive the people of a session of assembly. The upper house yielded in the question of parliamentary procedure. The use which the proprietor made of his power as territorial lord availed him nothing. In the relations with the crown the people showed themselves to have the advantage; and when there was left to the government no other lever than the bill for circuit courts, the bill for the recovery of small debts, and the bill for the relief of poor debtors, its case was hopeless. This was a fit series of victories for the lower house to add to its victory in the contest over English statutes.[1]

The occasions for defence of the province by means of fortifications arose from three sources; namely, that the coast should be protected against foreign enemies, that the northern border should be guarded on account of the boundary dispute with the Penns, and that the western frontier should be made secure against the Indians. But the need for these defences was seldom great; and the people showed themselves no more willing to make contributions for such fortifications than they did to subject themselves to a strong militia law.

Just as the question of arms and ammunition was closely connected with that of the twelvepence duty on tobacco, so also the question of coast fortification was connected with the fourteen-pence tonnage duty. Among the bills before the Assembly in the year 1637–38 — probably one of those sent over by the lord proprietor — was one for the erection of a fort; and although that bill did not become a law, a fort was soon erected at St. Inigoes, near

[1] *Supra*, p. 277.

St. Mary's, and not far from the mouth of the Potomac. In 1650 an act was passed for rebuilding and garrisoning that fort. The preamble stated that the purpose of the act was to guard against any indignity to the lord proprietor or any abuse to the people through the insolence and pride of ill-minded people trading with the province. The act provided that every five inhabitants of the province should furnish and support one man to assist in the work of rebuilding. It authorized the governor to press six men with victuals and the necessary ammunition into the said fort during the time of shipping. It provided that one thousand pounds of tobacco should be raised by a poll tax for paying a gunner. It directed that for trading with the colony every English or foreign vessel, having a deck or deck flush fore and aft, should pay a duty of one-half pound of powder and two pounds of shot, or the equivalent in value, on every ton burden for the use of the fort or any other necessary or general uses to be employed as the governor should see cause or think fit.

In 1661 the above act was superseded by a perpetual act that increased the duty per ton to one-half pound of powder and three pounds of shot, or the equivalent in value, and made it payable to the lord proprietor and his heirs without specifying any use to which it should be applied. In order to answer the end mentioned in the preamble of the act of 1650, this last act provided that masters or commanders of the vessels should, within ten days of their arrival within the province, give bond of three thousand pounds of tobacco to observe all acts and orders of the province during their stay therein; and if any such master or commander attempted to strike or punish any inhabitant of the province while on board the vessel, then such master or commander was to forfeit four thousand pounds of tobacco.

The kind of duty mentioned, as well as, in less measure, the comparison of these two acts, give some support to the claim of the people that the duty imposed by the act of 1661 was intended only for the purpose of fortifying ports. Yet, if such was originally the clear intention, then the representatives of the people at that time must have been unreasonably confident that the lord proprietor would never act otherwise than for the best welfare of all concerned. But however that may be, instead of taking powder and shot for arms and ammunition, and some money or tobacco for building forts, for more than a century the lord proprietor took for his own use a duty of fourteen pence per ton.

In 1678, when, in response to complaints from the province, the home government inquired of the lord proprietor about the provision for defence, he replied, "As to castles and forts there are none, so that if an enemy should land there, he would not find any place wherein to fix himself."[1]

No such reply could give satisfaction to those ignorant of the Maryland coast; and from the beginning of the royal government the governor was instructed from home to erect such fortifications in such ports as he and the council should think necessary for the security of the province; but this was to be done at the public charge. Five years passed before much heed seems to have been given to that instruction. In 1697, when the governor proposed to the lower house that since the province was so destitute of fortifications the crown be asked to send a frigate to keep cruising in the bay, the lower house resolved that there was no necessity for putting the crown to such a charge.[2] Finally, two years later, the governor

[1] Proceedings of the Council, 1667 to 1687–88, p. 265.

[2] L. H. J., May 31, 1697.

laid his instruction before that house. But on this occasion, also, the members of that body showed no more willingness to expend money for such a purpose than the lord proprietor had formerly shown. In fact, it is difficult to see how their reply can be so interpreted as not to show the people's complaint against the lord proprietor for his past neglect with respect to such coast defence was without adequate ground. For in that reply it was said: "This Province from one side to the other being so luxuriant in navigable rivers and so many capacious harbors and fair landings, the land next the water being generally low and level with no banks to prohibit landings, and the trade and shipping of the Province by the convenience of its creeks, rivers, and harbors, it does not seem to us a thing practicable to erect any such fortifications or to restrain shipping from the usual places of trade and confine it to any particular harbor. And we are confident that if their Lordships, the Lord Commissioners of Trade and Plantation, did visibly know this Province, they would concur with us and further adjudge that all the revenues of this Province were insignificant to the erecting of such desirable fortifications as would defend it or would be any considerable security to shipping in any case."[1] With this reply the question of coast defence terminated.[2]

The fortifications erected by the Marylanders as a protection from the Pennsylvanians, in the vicinity of the disputed border, were never strong. In 1686 the lord proprietor ordered that Fort Christiana, which had formerly been built by the Swedes, should be taken possession of. Accordingly that fort was soon garrisoned by five men.[3] The council decided that the expense should be defrayed out of the lord proprietor's revenue, but that

[1] L. H. J., June 30, 1699. [2] However, see *supra*, p. 91.
[3] Proceedings of the Council, 1666 to 1687–88, p. 485.

care should be taken to reimburse his Lordship at the laying of the next public levy; and while it does not appear that the lower house objected to this, nothing further appears with respect to the said fort. In the following century the brave frontiersman, Thomas Cresap, built his block-house near the bank of the Susquehanna in latitude forty. But about the year 1736 it was burned by the Pennsylvanians, one of its inmates was killed, several were wounded, and Cresap and four others were taken prisoners.[1]

In 1681 scouts were employed to range on the frontier in order to protect the province from the Indians. But no forts of much importance were built for such a purpose until the year of the establishment of the royal government. By that time, however, the northern Indians had been so stirred up by the French that the governor and council ordered that a line of three forts should be erected on what was then the western frontier — one in Charles County, one in Anne Arundel County, and one in Baltimore County near the falls of the Patapsco. For erecting these forts Captain John Addison and Colonel Nicholas Greenberry were authorized and empowered to press and procure carpenters, ordinary laborers, tools, provisions, and other necessaries. They were given assurance from the governor and council that toward paying for the same an allowance would be made at the next public levy. Each fort was to be in command of a captain with nine English soldiers and four Indians who were to range all along the line.[2] This line of defence may have been quite well kept up for one or two decades; but early in the eighteenth century the lower house deemed such an expense unnecessary.

[1] C. R., February 17, 1736.

[2] Proceedings of the Council, 1687–88 to 1693, pp. 461, 478.

Few other fortifications of any kind were erected on the western frontier until the time of the last intercolonial war, when that frontier had receded far toward the northwest corner of the province, where Fort Frederick and Fort Cumberland were at that time erected. Fort Frederick was built at a cost of upwards of £6000 out of the appropriation of £11,000 that was made by the Assembly for the defence of the frontier soon after Braddock's defeat. It was located on an elevated site about one-fourth of a mile from the bank of the Potomac and about ten miles above the mouth of Conococheague creek. Its form was quadrangular, each of its exterior lines being 360 feet in length. It was strongly built, its curtains and bastions being faced with a thick stone wall, and it contained barracks sufficient for 300 men.[1]

Fort Cumberland was about seventy-five miles west of Fort Frederick, and therefore separated from the frontier settlers of Maryland by a trackless wilderness from sixty to eighty miles in extent from east to west. It was originally built by some of the Ohio Company as a storehouse for their goods, and was for a time garrisoned by Virginia troops. As a fortification it was weak, being a stockade and commanded on almost every side by circumjacent hills. Because it was such a weak fort, because it was so far beyond the frontier settlements of inhabitants under the protection of the government of Maryland, and because, as was claimed, the track of the Indians in making their incursions was between Fort Frederick and Fort Cumberland, but out of the range of the latter, the lower house refused to burden the people with any expense in garrisoning it.[2] In the year 1757 that house even recommended that his Majesty's artillery and stores which

[1] McMahon, "An Historical View of the Government of Maryland," p. 305. [2] L. H. J., December 15, 1757; C. R., August 23, 1756.

were in that fort should be removed to a place of greater security.

With a poorly organized and disciplined militia, with a scant supply of arms and ammunition, and with but little defence from forts, the lord proprietor and his government were all the more at the mercy of the people in time of war, the expense of which the lower house might agree to on whatever conditions they saw fit to impose.

The first of such conditions was made as early as the year 1642, when by act of assembly the governor and council were authorized to press men, vessels, arms, ammunition, and provisions at the most usual rates and to charge the same upon the inhabitants of the province, provided such expense was incurred for the necessary defence of the province from invasion by the Indians or other enemies, and provided such expense should amount in any one year to no more than six thousand pounds of tobacco.

The duration of the above act was limited to a period of three years, at the end of which the governor had gone to Virginia because of the Claiborne and Ingle rebellion. For service in the suppression of that rebellion Governor Calvert, supported by Secretary Lewger, promised to pay soldiers out of the lord proprietor's personal estate. The rebellion was thereby easily suppressed.[1] But Governor Calvert died soon after, and the lord proprietor denied that the governor had had any authority for engaging his personal estate, as he was said to have done. The consequence was that the dispute between lord proprietor and people over this matter lasted for about three years. The lord proprietor refused to stand the cost of paying those soldiers except upon terms which the people would not accept. Thereupon, on the initiative of the

[1] *Supra*, p. 20.

representatives of the people, from the year 1650, the laws of the province forbade the levying of any subsidy, aid, customs, tax, or imposition upon the freemen of Maryland until after their consent in the Assembly had been first obtained. Furthermore, from that same year the laws of the province provided that in case the lord proprietor or the governor should at any time make war outside of the limits of the province without having first obtained the consent and approbation of the General Assembly, then the freemen of the province should in no way be obliged or compelled against their consent to assist with their persons or estates in the prosecution of such a war. Finally, martial law was not to be at any time exercised within the province except in camp or garrison.[1] About the only modification that was later made in these important restrictions was that which allowed the governor and council, in the interval between sessions of the Assembly, to levy a sum not exceeding fifty thousand pounds of tobacco in any one year.

From the restoration of the proprietary government, in 1658, until the Revolution of 1689 the war power of the lord proprietor and governor was probably stronger than at any other time. Yet during that period the hostility from the Indians and from all other enemies from without caused so little alarm that no important precedents with respect to carrying on war were then established. After the establishment of the royal government the province was for a long time so little disturbed by enemies from without that little further was done toward defining the war powers of the government and the people until the third intercolonial war.

At the beginning of that war the Assembly, in response

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, p. 302.

to the request of the home government for assistance, passed an act for raising £2562 10*s.* for that purpose.

But when it was desired to negotiate at Albany a general treaty between the Indians on the one side and the several colonies on the other, the lower house refused to incur any expense therefor until after the governor had invited that body to name two of the four commissioners who were to be sent to participate in the negotiation. Even then the representatives of the people not only named those commissioners, but secretly gave them instructions under nineteen heads, one of which limited the value of the presents to be given by Maryland to the Indians to £300. It was only by accident that those instructions became known to the governor and council. But after they had become thus known, the governor told the lower house that the prerogative of making peace or war was such an acknowledged and undoubted right of the crown that neither house of Parliament had ever pretended to authorize or instruct any minister employed in such negotiation. He said that by the charter of Maryland that prerogative had been delegated to the lord proprietor, and that therefore he could not, consistently with his duty and station, commission any person who should think himself obliged to observe and pursue any other directions than such as he, the governor, should give him.

When the lower house was first called to account for giving such instructions, that body claimed that they had not been given as directions to be observed in making the treaty, but simply that better information might be received concerning the Indians. However, when such an excuse had failed to give satisfaction, the same house acknowledged that the power of war or peace was in the crown; but at the same time reminded the governor that the giving of money and support to such war or peace

was a privilege of the people. Furthermore, it pretended that the intended meeting with the Indians could not properly come under the denomination of war or peace, since the demand of the Indians, so far as Maryland was concerned, was to be paid for land. But before the dispute had arisen with respect to these instructions, provision had been made for raising £300, and the governor, not being obliged to commission those named by the lower house, commissioned only such as he thought would follow none but his own instructions.[1]

It was during the last intercolonial war that the governor was made most conscious of his weakness or very limited war power resulting from the poor militia law and from the law which made it easy for the lower house to refuse to meet the expense of any warlike activity that was engaged in for any other purpose than to repel an invasion. In the year 1755 Governor Sharpe wrote: "We can scarcely oblige the people to act in defence of themselves and properties when immediately attacked; how, then, will they obey our orders to leave their business and families when they have not the least prospect or expectation of receiving a reward for their troubles?"[2] Two years later, the same governor again wrote: "It is a question whether the militia can be compelled to march out of this Province. . . . I do not believe that any of them would march to garrison Fort Loudoun, as they would conclude that the Assembly would never allow them any pay or provisions while they should remain on that service. Indeed, the Assembly has been too backward in making the men that have at times been ordered out on duty a proper allowance. And as most of the men of whom the militia is composed depend on their labor for

[1] L. H. J., May 23 to June 1, 1744; Dulany Papers.

[2] Sharpe's Correspondence, Vol. I, p. 221 *et seq.*

their daily bread and cannot lose any time without distressing their families, one cannot be surprised at their being less alert and ready to march than might be expected if they were punctually paid."[1]

That same year, after the lower house had passed a supply bill for supporting three hundred men on the western frontier upon conditions which the other branches of the legislature would not accept, Governor Sharpe did his best to show how, independent of all aid from the lower house, he could provide protection for that frontier. He said: "I will make Captain Beall a Major of the Militia and oblige as many men to serve under him as may be necessary for the defence of Fort Frederick and the more immediate protection of the frontier inhabitants. This step will make the Assembly sensible that I can, even without their assistance or consent, oblige the militia to do the duty or service they intend the three hundred men for, and that I am on my part resolved to exert the power with which I am to their mortification invested. It is true I cannot instantly punish every person that shall refuse to march, but I can order him to be prosecuted before the Judges of our Supreme Court, and I am thoroughly satisfied they will not suffer such a one to escape with impunity. And though I have no power to levy money without the consent of Assembly to pay any part of the militia that shall march in obedience to my orders, yet I can impress as much provisions or other necessaries for their use as they stand in need of."[2]

In pursuit of this resolution, after some of the militia had refused to march, Sharpe commanded the captain of each of two companies to certify to the justices the names of all those members of his company that so refused, and to proceed without delay to Fort Frederick with such

[1] Sharpe's Correspondence, Vol. II, p. 30. [2] *Ibid.*, p. 103.

officers and men as should be willing to march, though there should be no more than ten or even a less number in each company. As a result of such orders four companies were marched to the western frontier, even though some members of the lower house did all they could to encourage those companies to be disobedient.

But this success of the governor was not lasting, and in the end it served to arouse a successful opposition. For at the next meeting of the Assembly the lower house, by a vote of thirty-two to five, sent a remonstrance to the governor complaining that he had no right to compel the militia to march except to repel an actual invasion. After the governor's reply to that remonstrance was regarded as unsatisfactory, the same body sent a second remonstrance in which they intimated that the militia law was not in force, and in which they held that the conditions on the frontier were quite different from what they had been two years before, when at least twenty-six of the inhabitants there had been killed or taken prisoners by the enemy. Then this second remonstrance continued: "We are really at a loss to conceive what could induce your Excellency to be of the opinion that you had a power under that law to march the militia of this Province whenever and wheresoever you pleased, and that in order to prevent as well as to repel an invasion. But surely there are no words in that law that can give you that authority, nor can anything be farther from the intent and design of it; for such an authority would put it in the power of the Governor of this Province, whenever he found himself opposed in any views or designs that he might have tending to destroy the liberties of the people, to compel the whole militia of the Province at any time when he might suggest danger to march to any part of the Province he pleased, and keep them there until the Representatives

had complied with all his demands, let them be never so extravagant or injurious to the people. Such a power we conceive is not given nor could ever have been intended to have been given by any men in their senses. . . . We are apprehensive unprejudiced persons may infer that those who advised your Excellency to take that measure intended under the specious pretence of affording present protection to a few, by degrees to introduce an arbitrary power, the exercise of which must in the end inevitably enslave the whole."[1]

A few days later the house passed several resolutions, among which were the following: "Resolved unanimously that it is the undoubted right and indispensable duty of the Representatives of the Freemen of this Province in Assembly convened to inquire into, represent, and remonstrate against every measure in the Administration or exercise of executive powers of Government within this Province which in their opinion may tend to affect the Lives, Liberties, or Properties of the People in any manner not clearly warranted by the known laws or customs thereof."

"Resolved that no person is punishable for obstinately refusing to appear and serve in arms for the necessary defence of this Province by virtue of that clause of the act for Ordering and Regulating the Militia of this Province for the better defence and security thereof (admitting it were in force), which vests a power in the Justices of the Provincial Court to fine and imprison after a procedure according to the due course of Law and conviction of such obstinate refusal and disobedience as aforesaid except upon a foreign invasion."

"Resolved that agreeable to a reasonable construction of the said act there was not a foreign invasion of this

[1] L. H. J., April 15, 1758.

Province in December last, when his Excellency the Governor, with the advice of his Council, ordered the Companies of Militia of Queen Anne's and Kent Counties to march to the western frontier, nor was there one when the Companies were ordered out from Calvert and Cecil Counties in March last."

"Resolved that the Governor of this Province setting up an authority under the act aforesaid, with the advice of the Council, to march the good people of this Province to the frontiers thereof whenever he and they may be apprehensive of a foreign invasion, is not warranted by the act; and that if such a power should be exercised, the people might be enslaved by being marched as often to and compelled to remain as long on the frontiers as the Governor and his Council might think fit, while their helpless families were perishing at home."[1]

What the governor felt to be the force of these resolutions was seen a few months later when General Forbes was anxious that Fort Cumberland should be garrisoned with Maryland militia for three or four weeks in order that all the Virginia troops might be drawn from that post to strengthen the rear of his army. For upon that occasion Governor Sharpe wrote to Pitt as follows: "As our Assembly, when they met last, made some resolves declaring our militia law to be obsolete or not in force, and denying that I have any authority or right with the advice of the Council to march any of the militia, even if our law was in force, unless in case of an actual invasion, or, as they construe that expression, unless a very large body of the enemy was actually in the heart of the Province, I have told General Forbes that I am afraid no more of the militia would be prevailed upon to come thus far if I was to attempt to carry them to Fort Cumberland."[2]

[1] L. H. J., May 8, 1758. [2] Sharpe's Correspondence, Vol. II. p. 249 *et seq.*

A little later he again wrote, "I hope General Forbes does not depend on the militia of this Province to garrison Fort Cumberland ; if he does, he will most certainly be disappointed, for I am satisfied it will not be in my power to prevail on a single company to march thither." The governor's power over the militia was, therefore, at last reduced to little more than a shadow.

In most of the money or supply bills framed for carrying on this last war, the lower house not only insisted on directing how the province of Maryland should be defended, but in such bills that body showed much less zeal in giving aid to the common cause than it did in limiting the power of the governor, in taxing the great offices and the lord proprietor's private property, in appropriating for public purposes certain revenues which the proprietor claimed he had a right to, and, after the rejection of such bills, in presenting the home government with charges against the proprietary government. Yet such a course was the most natural one. For, unlike that of most of the other provinces, the boundary of Maryland was so defined by charter that there was no prospect of her acquiring new territory by conquest. Her people, therefore, except when greatly alarmed about their own safety, had no desire to engage in that war or burden themselves with any expense for waging it. Because by so doing they would seem only to be aiding the other provinces to expand their territory.

The government of Virginia was so thoroughly aroused when it learned that the French had seized and imprisoned some traders of the Ohio Company, and had reduced and pillaged one or two of that company's fortified trading-posts, that Colonel Washington was despatched to require of the French their immediate evacuation of the invaded territory. When the home government had been informed,

it, through its secretary of state, the Earl of Holdernesse, urged each of the several colonies to resist any encroachment of the enemy on the British possessions in America. But in response to Governor Sharpe's first appeal to the Maryland Assembly for aid in this matter, the lower house, on November 16, 1753, said: "We are sufficiently apprehensive of the great danger of suffering a foreign power to encroach upon any part of his Majesty's Dominions, and we are resolutely determined to repel any hostile invasion of the province by any foreign power. . . . And whenever the circumstances of our neighbors require it, we will cheerfully contribute as far as we are able toward defending them against the attacks of their enemies; but as there does not appear at present to be any pressing occasion for imposing a tax upon the people for these purposes, we hope our unwillingness to do it at this time will be ascribed to the real motives of our conduct, a prudent care and regard to the interests of our constituents [rather] than [to] any disinclination to the service recommended."

Washington returned from his mission less than three months later; and it was stated in the *Maryland Gazette* of February 14, 1754, that he had reported that the French had built several forts near the Ohio; that each of those forts was garrisoned by about five hundred men, chiefly French, with twelve mounted cannon; that great numbers of other Frenchmen and Indians were said to be close at hand; and that the commander at one of those forts had said he had instructions from the king of France to advance farther and fight those who should oppose. By this time, therefore, war seemed inevitable. The Maryland Assembly, in response to the governor's call, met again on the twenty-sixth day of February. On that day the governor endeavored to show the representatives

of the people that there was cause for alarm. He asked that Virginia be assisted in the campaign which she was about to undertake. He laid before both houses a written appeal from the governor of that province, and he spoke of the need of money for making a present to the Indians of the Six Nations, when, in June, the general conference should be held with them at Albany. But on the third day of their meeting the lower house unanimously resolved that no money should be raised in response to the appeal from the governor of Virginia; and, in accordance with that resolution, the members of that body sent a message to their own governor, saying: "We are fully convinced that our own security is connected with the safety of our neighbors, and that in case of an attack we ought mutually to assist and support each other. But as it does not appear to us that an invasion or hostile attempt has been made against this or any other of his Majesty's colonies, we do not think it necessary to make any provision for an armed force, which must inevitably load us with expense."

For making a present to the Indians, that house was somewhat more willing to raise money. It passed a bill raising £300 for a present and £200 for defraying the expense of the commission. Yet in doing so it appropriated the money arising on licenses to ordinary keepers as well as on those to hawkers and pedlers. The lord proprietor still claimed the right to all such money for his private use; and although ever since the last intercolonial war he had permitted the license money from ordinaries to be applied to public purposes, that arising on licenses to hawkers and pedlers had never yet been so applied. Under these circumstances the upper house amended the bill so as to leave out the part relating to hawkers and pedlers and to mortgage the license money from ordinaries

for the whole £500. But to this the lower house would not agree, and after that body had passed four resolutions to justify its conduct in the eyes of the people, the session ended without having made provision for the raising of any money whatever.

At the same time the hostilities of the French and their Indian allies were becoming more alarming. Governor Sharpe soon met the Assembly again, and in his opening address, on the eighth day of May, said, "I am very much concerned that the great progress, the vast preparations, and the avowed designs of our common enemy, whose encroachments and depredations on his Majesty's territories occasioned our last meeting, have necessitated the neighboring governments to repeat again most earnestly their solicitations for us to engage and unite with them in supporting his Majesty's just and right pretensions to these his American Dominions, at this time attacked and invaded." He also spoke again of the necessity of complying with his Majesty's pleasure, signified by the board of trade, concerning a present to the Six Nations. Six days after the delivery of this address the lower house unanimously resolved that money be raised for making a present to the Six Nations and for assisting Virginia, which was now regarded by that body as attacked and invaded.

To agree upon the ways and means of raising the necessary money was, however, yet to be a difficult task. The lower house decided that a tax of five shillings should be levied on each wheel of a coach, chair, chaise, or chariot, that a light tax should be levied on lawsuits, that twenty shillings should be added to the price of an ordinary license, that the duty on convicts should be increased by twenty shillings, the duty on indented servants by five shillings, and the duty on negro slaves by ten shillings per poll. It

was also again decided that the annual license sold for £3 to every hawker or pedler should be appropriated to this end. Furthermore, when the motion was put to tax every lucrative office, it was carried by a vote of twenty-eight to twenty-three ; and in accordance with that vote it was decided that an annual graduated tax should be levied on offices as follows: on that of secretary, £5 ; of commissary general, £5; on two judges of the land office, £5 ; five naval officers, £10 ; fourteen county clerks, £14 ; examiner general, £1 ; and fourteen county surveyors, £7. Having thus decided upon the ways and means, the lower house quickly passed the bill for raising £500 currency for a present to the Six Nations, £150 currency to defray the expense of the commission, and £3000 currency for assistance to the Virginians. The upper house objected to the appropriation of the hawkers' and pedlers' license money and to the tax on officers. A conference was held. The conferees from the lower house agreed to give up the tax on officers, but they would not give up the hawkers' and pedlers' license money, and the bill was lost. Before the close of the session, however, the two houses passed an ordinance for taking out of the treasurers' hands £500 currency for a present to the Indians and £150 for defraying the expense of the commission.

Without the much needed assistance from Maryland and with only three hundred men, Colonel Washington set out for the invaded territory. Upon engaging with the enemy, he and his men were outnumbered three to one. Thirty of his men were killed, seventy were wounded, and he was forced to retreat. Having received an account of this repulse as well as the news that the French had erected Fort Duquesne, — a dangerous menace to the frontier settlements of both Virginia and Maryland, — Governor Sharpe called the Assembly to meet on the

seventeenth day of July, and in his opening address said: "The designs of the French must now be evident to every one. They have openly and in violation of all treaties invaded his Majesty's territories and committed the most violent acts of hostility by attacking and entirely defeating the Virginia troops under Colonel Washington." This time, on the opening day of the session, the lower house voted to raise £6000 currency. In considering the ways and means it was resolved to tax carriage wheels, to increase the price of ordinary licenses, to increase the duty on convicts, indented servants, and negro slaves, and to appropriate the proceeds of the sale of licenses to hawkers and pedlers just as was provided in the bill of the preceding session; but instead of the tax on lawsuits and on officers, it was decided to levy a duty of twopence per gallon on Madeira wine. Finally the bill, as it passed the lower house, left the governor free to apply the whole £6000 in any way he should think proper for the assistance of the Virginians and for the relief and support of the wives and children of such Indian allies as should put themselves under the protection of the government of Maryland. The upper house passed this bill without an amendment, it became a law, and with a part of the money thus provided the governor caused two companies of Maryland troops to be enlisted and then sent them against the French.

In November of this year Governor Sharpe received a royal commission appointing him commander of all the colonial troops. Hoping that the honor thus bestowed upon him by the crown would give him greater influence with the Assembly, he, on the twelfth day of December, met that body in its fourth session of that year. But in response to his appeal for further supplies, the lower house did no more than to pass a bill for raising £7000 by continuing

the same taxes and duties that had been levied for raising the £6000 and for continuing the appropriation of the license money to the same end. As the governor had recently received an instruction from the lord proprietor forbidding him to pass another bill which appropriated that license money for public uses, the provisions of the new bill relating both to licenses of ordinaries and to hawkers' and pedlers' licenses could not be accepted.[1] Thus the instruction from the lord proprietor was more than an offset to the commission from the crown, and the session ended without anything having been accomplished.

The next session began February 22, 1755, only a few days after notice had been received of General Braddock's arrival in Virginia. On the twenty-sixth day of the same month the lower house voted to raise £10,000 by no other plan than that in the bill of the last session, a motion to raise it by a poll tax of 1*s.* 6*d.* being lost by thirty-six votes to ten. So, again, no supplies were raised. But after the failure of its bill the lower house passed several resolutions, among which was the following, "Resolved, that the fines arising on ordinary licenses are and always have been the undoubted right of the country; that the Lord Proprietary by his prerogative can have no right to impose or levy by way of fine, tax, or duty any sum of money on any person whatsoever, or take to himself any such fine, tax, or duty imposed by any law of this province which now is [expired] or hereafter may expire without the consent of the representatives in general assembly."[2]

Furthermore, that house at this time addressed the governor as follows, "The appropriation of the ordinary license fines (which has at last appeared to be the great obstacle to our repeated generous grants) we are so firmly of opinion is the undoubted right of the country that

[1] Gilmore Papers.

[2] L. H. J., March 25, 1755.

nothing will ever induce us to give it up or do anything which may weaken that right."

Before the Assembly was again called General Braddock had held a conference at Alexandria with the several provincial governors, and a plan of operations had there been agreed upon. After that, however, on June 23, 1755, the next session was opened. By this time Braddock was approaching the enemy. The governor, in his opening address, stated that the general purposed first to reduce Fort Duquesne and expel the French from the invaded territory, and then to repair the old fort or construct another place of defence as a barrier against any future encroachments. Moreover, the governor told how it had been further planned to guard that place of defence with provincial troops, and to ask Maryland and the two neighboring provinces to support and victual them. Two days after this plan had been submitted, the lower house inquired of the governor if the amount each of the three provinces was expected to raise had been agreed upon at Alexandria. If it had been, they wished to know what those amounts were. To this inquiry the reply was that nothing of the kind had been entered upon as it was apprehended that such might not be agreeable to the respective assemblies. At the same time, however, the governor stated that all those present at the Alexandria meeting had agreed that the three provinces ought to be at the expense of constructing and supporting the place of defence; and he thought it was necessary for Maryland to raise at least £4000 at the present juncture. The day on which this reply was received the lower house voted to raise £5000 for the purpose mentioned by the governor; but the very next step which that body took was to resolve, by a vote of thirty-six to four, that the license money from ordinaries, amounting to about £645 a year,

should be one of the sources from which to raise the sum named. The result was that the two houses could not agree upon a supply bill for assisting in the execution of the proposed plan.

Nevertheless, as obstacles to harmony between the several branches of the legislature became greater, danger drew nearer. Within one week from the day this session was opened, the news came that the enemy had killed some of the inhabitants on the frontier of the province, that others had been taken prisoners, and that because of the alarm many families had deserted their habitations and fled eastward for protection. Upon receiving this news the governor asked that provision be made for raising and supporting one hundred men as rangers, and for defraying the expense of establishing and maintaining communication between Annapolis and the frontier. The lower house promptly responded by voting to make suitable provision for paying and maintaining eighty men, including officers to range on the frontiers for four months and to defray the reasonable expense of communication between Annapolis and Will's Creek for the same length of time. The bill which that body passed for this purpose provided for raising £2000. But it was to be raised by a duty on wine, rum, brandy, and other spirits, and by another increase, of five shillings per poll, in the duty on convicts. And this was the beginning of a controversy with respect to the convict duty that was continued in several succeeding sessions, the governor and the upper house objecting because the increase in the duty on that class of servants over that of others was in conflict with acts of parliament authorizing their importation. A still more serious objection to this bill was found in the clause which directed that there should be no impressment of any freeholder or housekeeper; and it must have

been this clause in particular which caused the upper house, in refusing to pass the bill, to say, "In our apprehension it is framed in such a manner that it would be very difficult, if not impossible, to be carried into execution so as to answer the purpose proposed by it."

Some explanation of the failure of the lower house to frame less objectionable supply bills at this pressing time of need is to be found in the bitter enmity of its members toward Catholics. The feeling of Protestants against Catholics had been strong ever since the eve of the Revolution of 1689. The present war intensified that feeling. The French were Catholics, and from this fact many Maryland Protestants seem to have reasoned that Maryland Catholics were allies or at least dangerous sympathizers of the invading enemy. In the year 1751 the lower house, in an address to the governor, had prayed that his Excellency would "put into all places of trust and profit none but faithful Protestant subjects, known as such by their religious and civil principles." That same year the two houses were engaged in a warm dispute over a law to prevent the growth of popery.

Again, the report of the committee on grievances which was submitted June 17, 1752 contained the following charges: "Popish Priests or Jesuits take grants of land from the Lord Proprietary, as well as deeds from others in their own names, whereon they build public mass houses, plantations, seminaries, for the public exercise of their functions; of which mass houses, seminaries, or sects of Jesuits there are six or more."

"Many Papists openly send children to St. Omer's and other Popish seminaries, out of the King's obedience, many of whom return to this province propagating their doctrines without control."

"Henry Darnall, the Attorney General, was brought

up and educated at St. Omer's and professed the Popish religion until he began the practice of law and of his taking the oaths to the government."

"John Darnall, the Attorney General's brother, one of the Judges of the Provincial Court, Clerk of Frederick County, Deputy Commissary and Receiver General, was bred out of his Majesty's obedience and was never known to attend a Protestant church. His wife is a Papist and he educates his children as Papists. Three more provincial Judges are married to Papists, two of whom execute the most considerable offices in the government. Most of the Receivers of Quit-Rents in the seven counties of the Western Shore are Papists."

"Many of the most influential Papists, especially Charles Carroll, do what they can to get members elected for the Lower House whom they think will best serve their purposes."[1]

Early in the year 1754, at the time when the lower house was refusing to give assistance to the Virginians, its committee on grievances was expressing the fear that the growth of popery within the province and the large possessions of the Jesuits in the vicinity of the French must endanger the peace of the province and the repose of all his Majesty's colonies on the American continent. Two months later, in the second session for that year, the same committee reported that several papists of St. Mary's County had made great opposition to the enlistment of men who were to march to the Ohio. And acting upon this report, while the two houses were unable to agree upon a supply bill, the lower house passed a bill, entitled "an act for the Security of his Majesty's Dominions and to prevent the Growth of Popery in this Province," which directed that manor lands belonging to

[1] L. H. J., June 17, 1752.

Papists should be taken from their owners and sold by commissioners to be appointed by the act, and that the governor and council should apply the proceeds of such sales toward defending the province from the encroachments of the French.[1] Again, in November of this same year, some freemen of Prince George's County instructed their delegates "to promote with all their weight and influence a law to dispossess the Jesuits of those large landed estates which render them formidable to his Majesty's good Protestant subjects, to exclude Papists from places of trusts and profit, and to prevent them from sending their children to foreign Popish seminaries for education."[2]

So, now, in this second session of the Assembly of the year 1755, when the French or their Indian allies were killing people on the frontiers, the members of the lower house became bold and open in charging that the lord proprietor and his governor were, to an alarming extent, showing favoritism to the Catholics. Thus, at this session, the members of that body made angry complaint because such men as Henry Darnall and John Darnall had not been removed from office, and because their attempts to get a law for the security of Protestants had been defeated. They were enraged because, as they charged, the governor had pardoned a man — who was under sentence of death for an atrocious crime — upon his becoming a proselyte to the popish religion; and because, as they charged, two other popish delinquents, under prosecution for crimes of the most dangerous nature and tendency, had obtained a *nolle prosequi*. Although Governor Sharpe showed that their charges had little or no foundation, he was unable, under these various circumstances, to prevail upon that

[1] L. H. J., May 30, 1754.

[2] *Maryland Gazette*, November 28, 1754.

house to pass a supply bill which did not seek to tie his hands to such an extent as to defeat its purpose.

After all his efforts along this line had proved to be futile, the governor prorogued the Assembly on the eighth day of July. Less than two weeks later came the news of Braddock's defeat and death. Thereupon, Governor Sharpe, assisted by several small companies of volunteers, did his best to defend the frontier. But in spite of his best efforts such great consternation arose among the inhabitants of that region that large districts, once inhabited, were deserted; and the freemen of Frederick County petitioned the Assembly to do something for their protection. The Assembly, however, was not convened again until after a council of war had been held at New York, where a plan of operations was concerted, and the quota of supplies expected from each province was fixed. But these matters having been attended to, the next session began February 23, 1756. From February 26 to March 3 the lower house sat as a committee of the whole to consider appropriations, ways and means, and then voted to raise £40,000, of which £11,000 was to be applied toward constructing and garrisoning a fort and not more than four block-houses on the frontier, £775 for the more immediate protection of that frontier, £3000 toward securing the alliance of the southern Indians, £10,000 toward carrying on an expedition to the westward in conjunction with the other governments, and £15,000 toward carrying on the plan of operations to the northward. The whole amount was to be raised by an excise and an import duty on wine, rum, brandy, and other spirits, by an import duty on horses, pitch, turpentine, and tar, by an additional duty on convicts and negro slaves, by a tax on billiard tables, bachelors, and certain legal proceedings, by a tax of one shilling per hundred acres on land if

owned by Protestants, but two shillings for the same number of acres if owned by Catholics, and by the continued application of the license money from ordinaries to this public end. The first and the second bills framed on the above bases and sent to the upper house were rejected. But after that house had pointed out its objections to the third, a conference was held. During the conference the lower house agreed to strike out the clause relating to convicts, made some concessions with respect to taxing the proprietor's lands and the appointment of commissioners who were to be intrusted with the application of the money. So, finally, the bill became a law after the Assembly had been in session for more than ten weeks. Even then its military provisions such as related to the place of constructing forts, supporting garrisons, and forming regiments and companies tied the hands of the governor much more closely than had formerly been permitted.

From this time until the close of the war, nearly seven years later, not another supply bill passed the Maryland Assembly. In September, 1757, the governor informed that Assembly that the £40,000 as well as the £6000 were nearly expended, and asked for further support of the men on the frontier and for a provision for receiving such of his Majesty's forces as should be sent to Maryland for winter quarters. The session continued from September 28 until December 16, and it was a most stormy one. The lower house complained of the hardships imposed on the people by the recruiting officers. It charged the troops on the frontier with neglect of duty. It especially censured the governor for employing any of those troops to garrison Fort Cumberland, alleging that such was contrary to the plain intention of the law by which they had been raised. It even found fault with the size of Fort

Frederick, saying that it was to be apprehended that the fort was so large that in case of an attack it could not be defended without more men than the province could support merely to maintain a fortification. Moreover, that body became arrogant and unduly suspicious in its examination of accounts relating to the expenditure of the £6000 that had been granted in the year 1754. In making the examination it claimed the right to call the governor's secretary before its bar and to oblige him to answer any question relating to those accounts which it saw fit to ask. When the secretary refused to answer some of the questions on the ground that they too much concerned the governor, and then failed to attend the house again as requested, a warrant was issued to the sergeant-at-arms for his arrest. In attempting to execute the warrant the sergeant was obliged to call at the governor's house; and in doing so the governor interfered and forbade the arrest. The lower house then made a direct attack on the governor, charging him with an unwarranted exercise of power in several instances, and, especially, with invading the rights, privileges, and authority of the people's representatives. At the same time, also, the governor's secretary was basely charged with embezzlement.

It was while the lower house was thus quarrelling with the governor that it passed a bill for defending the frontiers, which directed that Fort Cumberland should no longer be garrisoned by Maryland troops, that the troops in the pay of the province should not exceed three hundred, and that they should be not otherwise employed than in garrisoning Fort Frederick and in ranging just beyond the western frontier settlements. As there had but recently been more killing on that frontier, and as the means by which the money was to be raised did not seem

to be seriously objectionable, Governor Sharpe would have favored making the bill a law, had he not feared that the limitation of the field in which the troops were to be employed too much encroached on the royal prerogative. But not wishing to take the responsibility of deciding this question, he asked the advice of General Loudoun. Whereupon that officer, who was then commander-in-chief of his Majesty's forces in America, wrote in reply: "As you have asked my opinion about passing the bill, if presented with such a restriction, I am clearly of opinion that as things are situated at present in America I should be very cautious of passing any bill where there is a direct infringement of the King's prerogative, which I think this is. And I am still more of opinion that it would be right at present, as you are of opinion, that such a step would have a good effect; besides, it will in some degree prevent the disease from spreading. . . . Your assembly in this case have taken a step that tends to subvert all government, and at once throw off all submission to the Government of the Mother Country. I need not say to you how fatal the example may be, and how likely other assemblies are to follow the example if it cannot be stopped here till the King's Ministers are informed of the situation and have time to apply a proper remedy to an evil that is of so dangerous a nature."

In accordance with this advice the bill was rejected; but what was the final result of the governor's resolve to march militia to do the service for which those three hundred troops were intended has already been seen. Then, too, when the governor encouraged private subscriptions as a means of providing protection for the frontiers, he again met with opposition from members of the lower house, who sought to persuade the people that if the governor should raise money by such methods, they must not

hope to have any more assemblies convened, but that they would have to obey orders in council and ordinances instead of laws made with the consent of their representatives. In this manner thwarted again in his untiring efforts, the governor murmured, saying, "Thus may these Tribunes impose on the weak minds of the people, and while they delude them with the empty sound of Liberty and Privilege most effectually contribute to their destruction and the loss of his Majesty's Dominions."[1]

In the year 1758 General Forbes set out on his expedition against Fort Duquesne. As if for aid in this expedition, the lower house passed a bill — the third of like kind during the same year — for raising one thousand men and £45,000 to pay them. But from several clauses in that bill one is inclined to infer that the real intention of the house which passed it was to embarrass the government of the province rather than to give assistance to General Forbes. The upper house rejected it because it provided for giving to the lower house the sole right of nominating the commissioners to whom the money was to be intrusted and by whom paid out; because it provided for a double tax on land held by Catholics; because the tax which it proposed to impose on offices was much too heavy; because it proposed to tax the proprietor's quit-rents and his uncultivated as well as his cultivated lands;[2] and because of no less than ten minor objections.

In claiming the sole right of nominating commissioners the lower house was putting itself on an equality with the House of Commons. In endeavoring to impose a tax on the proprietor's lands and quit-rents, on offices, and a double tax on the land of Catholics, that house was but seeking to give blows to the lord proprietor, his friends,

[1] Sharpe's Correspondence, Vol. I, p. 251. [2] *Supra*, p. 100.

and dependents. In fact, there seems to have been much truth in the assertion of Governor Sharpe at this time, that the chief men in the lower house were anxious to throw everything into confusion, in the hope that the crown would then think it necessary to interfere in some manner or other that might be disagreeable to the lord proprietor.

That their own conduct might not appear without any justification, the members of that body at this time passed ten resolutions, among which were the following: "Resolved, that the right of nomination of commissioners in all bills of this nature being constantly exercised by the House of Commons does of course rest in this House; it being the undoubted right of the people of this province, as far as is consistent with their circumstances and dependent state, freely to exercise and to enjoy every liberty and privilege that his Majesty's subjects in Great Britain have either by themselves or their Representatives a right to exercise and enjoy according to the Law and Constitution of the Realm."

"Resolved that as a double tax on Papists and other Nonjurors is constantly imposed by the land tax acts in the Mother Country, this House think themselves sufficiently justified in imposing it here, and that considering the many valuable possessions both of lands and Negroes held by societies of Popish Priests and Jesuits living together in a collegiate manner, and the number of Papists and other Nonjurors residing in this Province, and the danger arising from their known principles which are incompatible with and destructive of all Protestant establishments, it is thought but common prudence to distinguish their disaffection by some public discouragement."

"Resolved that in all grants of aids for his Majesty's service and defence and security of this Province it is just and reasonable that the Lord Proprietary, who is more

nearly and immediately interested than almost any of his Tenants, should bear at least an equal proportion with them of the taxes necessarily imposed for those purposes, and that if his Lordship should desire (which we cannot suppose) to be totally exempted from the payment of a tax upon so large a part of his revenue as his quit-rents, it would discover an inclination to oppress his Tenants by loading them with that expense which he himself ought to bear for the security of his own property, and betray a want of zeal and loyalty to his most Gracious Sovereign by not cheerfully contributing with the rest of his Subjects toward the defence and support of his just rights against the encroachments of his most inveterate enemy."

"Resolved that a tax similar to that imposed by the bill upon lucrative offices, employments, and benefices is commonly imposed in England; and it is the more reasonable and just here as so large a proportion of the produce of the people's labor is given by law to the maintenance and support of the Officers and Clergy."[1]

Not long after the passing of the above resolutions an article was inserted in the *London Chronicle* which expressed great concern for the success of the expedition against Fort Duquesne since it was to receive no aid from Maryland, and then stated that the failure of the bill had been chiefly due to the lord proprietor's refusal to allow his estate to be taxed. A reply to the above in justification of the lord proprietor drew out another article containing several queries which were designed to cast reflections on the government of Maryland. The last of these queries was, "Whether the frequent clashing of interest between the Proprietors and people of our Colonies, which of late have been so prejudicial to his Majesty's service and the defence of his Dominions, do not at length

[1] L. H. J., May 9, 1758.

make it necessary for this Nation to inquire into the nature and conduct of these Proprietary Governments and put them on a better footing?"[1]

The expedition, however, was successful; and yet because of its success and the capture of Fort Duquesne the inhabitants of Maryland were still less concerned with respect to their own safety. The consequence of this was that, although the home government again and again pressed the Assembly to raise its quota for the purpose of bringing the war to an end, the lower house year after year, and sometimes twice in the same year, — nine times in all, — framed and passed a bill with the same objectionable clauses as that which they passed for giving aid to the expedition against Fort Duquesne.

Three years after that expedition the same house — this time in an address to the crown — not only sought to justify their course, but even to win the favor of the crown with gracious words, and to throw the blame on the lord proprietor and his government for the failure of Maryland to give the aid desired. Thus, in that address, was the following clause, "May it please your Majesty to indulge us, destitute as we are of the proper means of obtaining access to the Throne, while we make use of the opportunity of humbly expressing our concern that this Province has during the present just and necessary war contributed so little to the service of our late most Gracious Sovereign, and our confidence that until a full inquiry be made into the causes thereof which we most earnestly desire, and the people shall be permitted to raise a support for an Agent who may lay all their grievances which they suffer under the Government of their Lord Proprietary properly before your Majesty, you will be most graciously pleased to continue that favorable opinion which we hope you have

[1] Portfolio 13, Nos. 23 and 24.

hitherto entertained of the Protestant inhabitants of the Province of Maryland, than whom, permit us, Royal Sir, to say your Majesty has not in all your Dominions subjects more loyal, more hearty well wishers to our present happy establishment, or more firmly or affectionately attached to your most Sacred Person and Government."[1]

On the other hand, the lord proprietor, with the hope, perhaps, of convincing the representatives of the people that they were in the wrong, asked the attorney general, Pratt, to give his opinion with respect to the objectionable clauses of the bill. In response thereto that officer held that the nomination of commissioners belonged to both houses conjointly, that a double tax on Catholics would be a breach of public faith and tend to subvert the very foundation of the Maryland constitution, and that a tax on the lord proprietor's uncultivated lands would be unreasonable. Then, in general, he said, that the lord proprietor ought to resist with firmness all unreasonable attempts of the lower house to assume to themselves privileges which the House of Commons enjoyed. "For," he continued, "I am satisfied neither the Crown nor the Parliament will ever suffer these assemblies to erect themselves into the power and authority of the British House of Commons."[2]

But only a short time after these opinions had been laid before the lower house, Governor Sharpe stated that he was convinced that that body would frame a supply bill on the old terms unless the secretary of state sent a letter expressing his disapproval of their conduct. And as for the inhabitants of the province in general at that time, he said in a letter to the lord proprietor, "They seem to be very well pleased since they are not burdened with any more taxes, and as they do not conceive themselves to be

[1] L. H. J., April 22, 1761. [2] U. H. J., April 17, 1759.

in danger now from the enemy, and are not ambitious for acquiring a reputation for zeal and exemplary loyalty, they seem to be very indifferent about the event of the campaign."[1]

Finally, a letter from the secretary of state, somewhat of the nature the governor desired, was sent and laid before the lower house. But with respect to it that house simply said: "As to the severe reprehension contained in the Earl of Egremont's letter, which you have been pleased to lay before us, it is the particular misfortune of this Province to be without an Agent at home to represent the transactions of their Delegates in their true light, owing to the constant refusal of the Upper House to pass the bills which have been at almost every opportunity offered them for the support of a person in that character in London. And as that reprehension is so general, we must conclude that our most Gracious Sovereign and his Ministers have not been fully and truly informed of the repeated generous offers of the people heretofore made by their Representatives to raise very large supplies for his Majesty's service by bills passed for those purposes and constantly refused by the Upper House."[2] Thus did the people's representative body remain firm to the end.

During this last war, therefore, the conditions were especially favorable for fostering the principles of popular government. While the lord proprietor's control of his government was still further weakened, the course pursued by the lower house must have had great weight in causing the home government to resolve upon taxing the colonies. So that this was a period of great advance from the once monarchical Maryland, subject to a greater and a lesser king, to the time when she should become first supreme over the lesser and then independent of the greater.

[1] Sharpe's Correspondence, Vol. II, p. 397. [2] L. H. J., March 19, 1762.

CHAPTER V

FINANCE

"Most of the contests of the ancient commonwealths," says Burke, "turned primarily on the election of magistrates, or on the balance of the several orders of the state. The question of money was not with them so immediate. But in England it was otherwise. On the point of taxes the ablest pens and most eloquent tongues have been exercised; the greatest spirits have acted and suffered." The earnestness, the steadfastness, and the force of language with which the lower house of the Assembly engaged in so many disputes in which property was involved show that the importance which the people of Maryland attached to money matters was much like that which Burke found it to have been in the mother country. The people of Maryland were little subject to the bondage of religious ideas handed down from above. The interests which controlled their thoughts and actions were industrial and economic; and it was in the dependence of the government upon those controlling interests that the people were enabled to acquire great political power.

The government was dependent upon contributions from the people for military protection, for the pay of the civil officers, for the erection of public buildings, for the making of other public improvements, for the support of schools, and for the support of the established church. Those contributions were made in the form of taxes, duties, fees, license money, fines, and forfeitures; and with respect

to every one of them some important question arose. With respect to taxes and duties, the Assembly, as early as the year 1650, passed an act to prohibit the levying of either without the consent of the people or their representatives; however, instead of keeping the government subject to annual appropriations, the lower house, during the period of royal government, passed an important revenue bill without any limit as to its duration. With respect to fees, the question was whether they were of the nature of taxes, and, therefore, whether either the lord proprietor or the governor in council, without the consent of the lower house, had the right to fix their amount. With respect to license money, fines, and forfeitures, the question was whether income from such sources belonged to the proprietor for his private use, or whether it should be a part of the public revenue.

Of taxation there were two forms; namely, the personal, or poll tax, and the property tax; but the former was much the more common. In fact, the latter was used only during the government under the Puritan commissioners and for raising a part of the sums named in the two supply bills that were passed during the fourth intercolonial war. However, from the middle of the eighteenth century the lower house was anxious to employ that method in order to throw the larger burden on the luxuries of the wealthy, in order to oblige the lord proprietor to pay a larger share, and in order — by appointing the assessors and collectors — to gain a greater control over the laying and collecting of taxes, perhaps, again, at the expense of the lord proprietor and his wealthy dependents.

The poll tax furnished the means whereby the members and the clerks of both houses of Assembly, the justices of the provincial court and of the county courts, the clergy, and, for a time, the members of the council were paid,

most of the public buildings were erected, other public improvements carried on, and, until the fourth intercolonial war, the expense of military operations defrayed. Previous to the year 1650 public charges for any of the above purposes were assessed upon the taxable inhabitants somewhat in proportion to the value of their estates. But, from not later than the year 1654, the value of the estates ceased to be taken into account, and the tax became more properly a poll tax. By assessing it upon servants and slaves as well as upon freemen, it was thought by some that the burden of such a tax continued to fall upon those who had to pay it quite nearly in proportion to the value of their estates.[1] Yet, at the time of Bacon's rebellion in Virginia, the complaint arose in Maryland that the poor freemen were obliged to pay taxes equal with the rich.[2]

For determining what persons should be treated as taxables, or made subject to the poll tax, there was no law until 1654; and even then an act of assembly of that year merely required that the tax should be imposed upon servants — except white women servants — as well as upon freemen. That act did not long continue in force, and another was not made to take its place until 1674, when it was enacted that taxables should include all freemen, except priests and ministers, who were sixteen years of age and over; all male servants imported at the age of ten years and over, and all slaves whatsoever of the age of ten years and over. In the year 1692 the law was so changed as to increase the age limit of slaves and imported male servants to sixteen years, and to exempt paupers from paying the tax. In the year 1715 the law was further amended so as to exempt no other clergymen than

[1] Sharpe's Correspondence, Vol. II, p. 100 *et seq.*

[2] Proceedings of the Council, 1671 to 1681, p. 139.

those of the Church of England having benefices within the province, and so as to direct that the names of slaves, adjudged by any county courts to be past labor, might be stricken off the list. Finally, in the year 1725, it was enacted that female mulattoes born of white women and all free negro women should be counted as taxables.

For a time the lists of taxables were prepared under the supervision of the sheriffs. But in 1670 the council felt that the lists thus prepared were incomplete, and, as a consequence, the constable of each hundred was given directions for preparing such a list. From the year 1692 an act of assembly directed that the constable should, between the twentieth day of June and the last day of July, repair to every house or habitation within his hundred, and ascertain of some chief person in the family the number of taxables within the household. After securing this information, he was to prepare two lists of all the taxables within his hundred, send one to the sheriff of the county, by the first day of August, and present the other at the next county court to be set up for public inspection. Each sheriff was to send a list of the taxables for his county to the secretary's office by the twentieth day of September.

A committee on accounts, consisting of two members from the upper house and four or five members from the lower house, examined and either passed or rejected public claims. The journal of accounts, as made out by this committee, had to pass both houses. To the amount in the journal when passed, was added whatever sum any act or ordinance of assembly directed should be raised by this form of tax. An act of assembly was then passed by which a committee, consisting of five members of the upper house, and one of the four delegates from each county, was empowered to meet at Annapolis the fourth Tuesday in October, then and there pass upon such other

accounts as had become due, and lay, assess, and apportion the public levy. The fiscal year ended the tenth day of November. By that day was added to each county's apportionment whatever sum the county court levied as county and parochial charges. Then the whole, including the forty pounds of tobacco per poll for the clergy as well as the fees of officers, was collected by the sheriff on a commission of five per cent.

Next to taxation proper, duties on both imports and exports, but especially the export duty on tobacco, were an important source of revenue. From the year 1671, by an export duty on tobacco the governor was paid his salary, the lord proprietor was for a time paid his quit-rents, for more than half a century a fund was raised for the purchase of arms and ammunition, from the year 1723 schools received some support, and from the year 1732 a paper currency was successfully circulated. By both an export and an import duty on beef and pork, by an import duty on wines and other liquors, on pitch and tar, and on negroes and Irish Catholic servants, some further income was derived for the support of schools. By several import duties, also, some money was raised for his Majesty's service during the third and fourth intercolonial wars.

The several duties were collected by the naval officers, paid by them to the treasurers, and applied, according to the directions of acts of assembly, by the governor and council. But full accounts to the lower house of all receipts and expenditures were required, and the same were examined by the committee on accounts of that body.

In the year 1766, when the population of the province was not far from one hundred and seventy thousand, of whom about one-third were blacks, the annual receipts from taxes and duties were reported to have been about £30,000 ster-

ling.[1] As all taxes and duties were at one time or another levied by consent of their representatives, the people at no time made any serious complaint about their being oppressive, except during the twenty years immediately preceding the Revolution of 1689, in which time it was charged that the lord proprietor exerted an undue control over the Assembly. However, even in the eighteenth century, some long-continued disputes arose.

And what is especially deserving of notice is, that the principal one of those disputes, the one from which others took their rise, was closely involved with the proprietor's relation to the province as its territorial lord. That principal dispute pertained to a duty for the support of government, and, from the year 1671 until the year 1733 the act of assembly, which imposed that duty, also made an important provision with respect to the payment of quit-rents. Here, then, it will appear that the territorial relations had an important bearing on the proprietary government.[2]

From 1671 to the Revolution of 1689 the act that imposed twelvepence duty per hogshead on tobacco for the support of government during the life of the lord proprietor, also required that the proprietor during his lifetime should receive payment for his quit-rents in tobacco at twopence per pound. During the period of the royal government, the provision with respect to quit-rents continued unchanged until the death of the lord proprietor, Charles, in 1715; while the duty for the support of government was made perpetual. Then, upon the restoration of the proprietary government, when that part of the old law which related to the payment of quit-rents had expired, the other part, which had become perpetual, was set aside by a temporary act for paying the quit-rents as well as for giving a support to the government. The

[1] Portfolio 3, No. 12.

[2] *Supra*, pp. 79–82, 172, 181, 290.

temporary act was continued by successive revivals until the year 1733. But from ten years before, there had been a growing complaint that the provision in that act with respect to quit-rents was more favorable to the proprietor than to the people. It was, therefore, at last suffered to expire ; and then, again, the duty for the support of government was imposed and collected under the earlier law, which, as a perpetual act of 1704, had not been repealed. It is, therefore, clear that originally the duty for the support of government was given only in return for favorable terms on which to pay quit-rents; that, later, the provision for the support of government was given an unlimited term of duration, while that with respect to quit-rents remained limited ; and that, finally, the people themselves rejected the temporary provision for the payment of quit-rents, and were left with nothing but the perpetual agreement to pay for the support of government.

For a time after the expiration of the temporary act, the people seem to have submitted rather quietly to the fate which the worst of the bargain had brought upon them, and only timid objection was raised to the collection of the duty as imposed by the law of 1704. But in the year 1739 the lower house was endeavoring to make a new bargain with the proprietor for paying his quit-rents, and at the same time that house was raising a grievous complaint about the oppression the people were subjected to from excessive officers' fees. In the attempt to make a satisfactory bargain for the payment of the quit-rents, and in the attempt to bring about a reduction of fees, the lower house seems to have been confronted for the first time with the strength which the lord proprietor derived from the perpetual law for the support of government. The consequence was that it then occurred to a large majority in the lower house that they might contend with

some effect that the law of 1704 was no longer in force, on the ground that such a law, made when the government of the province was in the crown, could not be continued in force upon the restoration of the proprietary government.

In that year, therefore, the lower house said to the governor: "We having in the most candid and serious manner taken into consideration the money lately raised as a duty upon tobacco for the support of his Lordship's Government, must acknowledge ourselves sensibly concerned to find that 12*d.* sterling per hogshead since September 29, 1733, has been levied and collected from the people of the Province without any law that we know of to warrant the same. We have indeed been informed by the several Naval Officers that they levy that money by virtue of an act of 1704. What light that act hath hitherto appeared in to your Excellency we cannot say, but we hope you have considered it in the manner we have done. As to the several acts made for raising money for the support of this Government at the respective times when the same was in the hands of the Proprietary or immediately in the Crown, you will be persuaded that those made in the one have never been deemed to extend to the other."[1] In that same year, also, as well as in the next, a bill was sent to the upper house which contained a provision for continuing the usual duty of twelvepence per hogshead; but in that bill only £1000 were to be given to the governor as his salary, the balance to be used for the purchase of arms and ammunition, and the duration of the act was to be limited to three years.

From the year 1750 it was a standing resolution of the same body that the levying of the duty in question was not warranted by law, and that if it were so warranted

[1] L. H. J., May 30, 1739.

one-fourth of it ought to be applied, as it was under the royal government, toward the purchase of arms and ammunition. In the year 1750, also, that house, in an address to the lord proprietor, declared they could not conceive that by any construction of the act of 1704 the lord proprietor could be meant or intended as successor to the crown, or that a duty given for the support of the royal government could mean or intend the proprietary government. And they hoped the lord proprietor would no longer continue to levy the said duty or lay the lower house under the disagreeable necessity of taking any other method of application for redress.[1]

On more than one occasion some attempt was made to get a subscription for the support of an agent who should bring this matter, as well as that pertaining to the fourteen-pence tonnage duty, to a hearing before the king in council.[2] But it is not probable that there was any real desire to have the case decided by the king in council, since the people could hardly have hoped it would be decided in their favor. For, during the last year of the royal government, there was a general revision of the laws of the province, and, upon the restoration, all those laws were continued in force. Then, too, as under the royal government, so, under the proprietary government, the governor was really in each case named by the crown. There was but this difference in that respect; namely, under the royal government the crown appointed the governor during pleasure, only, while under the proprietary government the crown named the lord proprietor and his heirs as hereditary governors, giving them the privilege of appointing a lieutenant governor to administer the government in their stead. Therefore, it

[1] L. H. J., June 2, 1750.

[2] Sharpe's Correspondence, Vol. I, p. 421; Dulany Papers.

was held that, although a law made for a support of the lord proprietary could not be extended to a support of the crown, it would not follow that a law made for a support of the crown could not be extended to a support of the lord proprietary.[1] With such reasons for sustaining the lord proprietor, at a time when the crown, in the royal provinces, was contending against annual appropriations as the great source of its own weakness, it is not to be supposed that the lord proprietor would have been subjected to such annual appropriations, by the decision of the crown as to the law of 1704.

Nevertheless, although the people had the weak side of the case, they made much out of it ; and Governor Sharpe complained that while the lord proprietor had a clear, inviolable, and indisputable right to the duty, the peremptory refusal by the proprietor to allow any proposal to be heard concerning the appointment of an agent for the settlement of the dispute before the king in council tended to confirm the people in the belief that their cause was just.[2] So the outcome of it was that, although the case was never brought to trial, it was an important source of strength to the lower house in the vigorous endeavor of that body to curtail every other source of income to the lord proprietor or his government, such as an allowance to the council and its clerk, fees to officers, and license money, fines, and forfeitness to the lord proprietor.

During the years of the most lively controversy over that duty the annual income from it was about £1400 sterling per annum. It was, in the main, the governor's salary. But while the governor was obliged to pay out of it £200 toward the salary of Secretary Calvert, the

[1] Sharpe's Correspondence, Vol. I, p. 24 *et seq.*

[2] *Ibid.*, p. 433 *et seq.*

people were further taxed £80 per annum for the purpose of paying the governor's house rent. This was not all. Not satisfied with their merely paying his rent, the people were asked to build a house for him. An appropriation was more than once made for that purpose. But the course pursued by Governor Bladen, to prevail upon the lower house to make an additional appropriation toward the building of that house, was such as to give the people one of their most just causes of complaint, and thereby added to the force of the attacks on the government.

As early as the year 1674 Governor Charles Calvert offered to locate the seat of government in that county — either St. Mary's or Anne Arundel — which should agree to build for him a convenient dwelling house of brick.[1] But the house was not built as a result of this offer. During the period of royal government and at the time that the seat of it was being removed from St. Mary's to Annapolis, the lower house was urged to grant money for such a building. But that body then felt that the people had already been put to a great expense in erecting other public buildings at the new seat; and not until 1704 did they even so much as propose that the threepence duty for the purchase of arms and ammunition should be applied to the erection of the structure which the governor desired. As the upper house could not consent to such an application of that duty, another attempt to have the house built failed. In the last year of the royal government, while the question, who had a right to the income from licenses for ordinaries was provoking a warm dispute, Governor Hart proposed that the money from that source be applied toward building a governor's house

[1] Proceedings and Acts of the General Assembly, 1666 to 1676, pp. 371, 377, 378 *et seq.*

on condition that another sum, equal to twice the amount of such license money, be appropriated for the same purpose.[1] But as the lower house would not agree to this, the governor could do no more than merely set aside the license money alone, toward the erection of the building desired; and after the restoration of the proprietary government, even that money was otherwise applied.

Not until the year 1732 did the Assembly ever make an appropriation for the building. It was in that year that the act of assembly was passed for issuing £90,000 in paper currency, the credit of which was to be supported by a duty on tobacco. Out of the £90,000 in bills of credit, the governor was to have a sum not exceeding £3000, for the purchase of the ground and the building of the house. Yet again, a dispute arose over the title to the land which was desired for the lot; and as a consequence, for another ten years little or no progress was made in this matter.

But in the year 1742 Ogle was succeeded in his station as governor by Thomas Bladen. So happy were the people because, for the first time, a man born within the province had been made their governor, that, in the very first year of his administration, the former appropriation of £3000 was increased to £4000. The act by which this new appropriation was made, however, directed that the cost of the house and lot should not exceed the £4000.

Alas, the early popularity of this native-born governor soon vanished. The land which he selected for a lot on which to build, had once been granted to Thomas Bordley and Thomas Larbin. Although the patent for the same had been annulled by a decree in chancery, Stephen Bordley, the son of Thomas Bordley, had appealed the case. Wherefore, after the building had begun, Mr. Bordley

[1] L. H. J., May 19, 1715.

gave notice to the lower house that he was determined, if necessary, to carry the appeal to the king in council, and that if the matter were at last decided in his favor, he would claim not only the land but the house.[1]

The governor was at once asked to give an account of the matter. In doing so, he stated that he had looked upon the pretended right of Mr. Bordley as insignificant, yet in view of extinguishing all claims and pretensions he had offered to pay £200 currency, which was Bordley's own price. He further stated that after the agreement had been made, he had let the contract for the building, and the work had begun, before the deed had been drawn; that then Bordley was so unreasonable with respect to the deed that they could not agree; but that he, on his part, would agree to any deed of which the lower house should approve. The disagreement with respect to the deed was that while the governor insisted that the land should be warranted against Stephen Bordley and all heirs claiming under him or his father, Mr. Bordley insisted that it should be warranted only against himself and his heirs.[2] The lower house was satisfied with the terms desired by Mr. Bordley; and this controversy was settled, somewhat to the chagrin of the governor.

But that incompetent officer was about to undergo a far more severe trial, and the lower house was about to be confronted with what had the appearance of another device for increasing the burden of taxation upon the people without the free choice of their representatives. Shortly after the question about the deed was disposed of, the governor acquainted the lower house that, according to his estimate, £2000 over and above what had been appropriated would yet be needed to complete the house.[3] This

[1] L. H. J., May 4, 1744. [2] *Ibid.*, May 8, 1744.
[3] L. H. J., May 16, 1744.

was vexatious intelligence to those to whom it was given, and they asked to be excused from giving the additional sum, saying that although the house might not be so ornamental as desired, yet they thought that with prudent management it might be finished, or nearly so, with the sum already provided. After he had been refused the additional £2000, the governor asked for only £800 or £900, — a sum which he thought barely sufficient to enclose the building and thereby save it from ruin. But, by a vote of twenty-eight to sixteen, the lower house declined to make any further provision that the upper house could accept. Neither would they do anything to make good to the governor about £900, which he had expended of his own.

In the year 1750, when Ogle was again governor, the lower house was urged to take action toward saving the building and toward paying Bladen's claim. But that body resolved not to agree to burden the country with any further expense toward preserving or finishing the house for the use of the governor. It also resolved that Bladen's claim was not warrantable either by the rules of law or equity, since his conduct in the affair relative to that claim was contrary to and a violation of the trust and confidence reposed in him by the people.[1] One year later the upper house told how it was reported that some of the timbers in the unfinished building were rotten, many of the shingles stolen, and other materials in danger of being rendered quite useless, and urged that something be done to prevent a total loss of the money already laid out.[2] But to this, also, the lower house replied that its members had resolved for the present not to intermeddle or interfere in anything relating to the building, and that

[1] *Ibid.*, May 18, 1750.

[2] L. H. J., December 12, 1751.

they apprehended that the loss could not be retrieved, nor the public benefited by being at any further expense about it.

Early in Governor Sharpe's administration, Secretary Calvert wrote that the lord proprietor so much desired the completion of the house that he would be disposed to make a voluntary gift toward that end, did he not think it advisable that the Assembly should be obliged to complete its unfinished work.[1] Governor Sharpe, however, had little hope that the Assembly could be prevailed upon to act in the matter. He stated that the building was in such a bad condition that he thought that not less than £300 or £400 would be required to put it where it had been left by the workmen, and that from £3000 to £4000 would be required to complete it.[2] The raising of a part of the necessary amount by the sale of lottery tickets and by subscription was considered, but nothing further was ever done toward completing the building for a governor's house. The attempt of the lower house to have it finished as a college hall, by appropriating the license money from ordinaries to that end, also failed.[3] On one of the last days of August, 1766, the roof fell in;[4] and in this condition it remained until after the proprietary government was overthrown. For more than a quarter of a century, therefore, it stood as a constant reminder of dissension and as conspicuously indicative of the diminishing power of the lord proprietor.

The first act of assembly for regulating ordinaries was passed in the year 1678. It required every keeper of an ordinary to purchase annually a license, for which two thousand pounds of tobacco were to be paid if the ordi-

[1] Sharpe's Correspondence, Vol. I, p. 130.
[2] *Ibid.*, p. 56.
[3] *Supra*, p. 143.
[4] *Maryland Gazette*, September 4, 1766.

nary was in Annapolis, otherwise, only twelve hundred pounds. The act directed that this tobacco should be paid to the lord proprietor. The number of such licenses sold at this time was, of course, small; but by the middle of the eighteenth century the number had risen to more than one hundred, and the price of each had been changed to from £4 to £5 currency.

Until the Revolution of 1689 the lord proprietor had given the proceeds of the sale of those licenses to his secretary. But ever after the establishment of the royal government, the lower house contended that all such money belonged to the public, and, therefore, that it could be used only for such ends as the Assembly should direct. A strong jealousy existed between Thomas Copley, the first royal governor, and Sir Thomas Lawrence, the first royal secretary. This made Copley most willing to assent to a bill which directed that the said license money should be paid to himself. At the same time the misused but avaricious Lawrence incurred the enmity of the whole province by his mercenary disposition of the county clerkships. Then, still claiming a right to the license money as a perquisite of his office, he made an appeal to the crown, and went to England to prosecute the same. He was successful, and during Governor Nicholson's administration an act of assembly gave the money to him as secretary. However, upon the expiration of that act, in the year 1699, the Assembly again took it from him and gave it to the crown for the support of government. Again, the litigious Sir Thomas asked the crown to interpose its authority; and, again, the crown directed that he should have the money.

This time, however, instead of complying with that direction, the Assembly again passed a bill for continuing the application of that money according to the law of

1699, and then petitioned the crown to assent to it. Instead of granting the prayer of the petitioners, the crown repeatedly urged them to pass the bill so as to make the money payable to Lawrence. But as late as the year 1708, even members of the upper house — the crown's own appointees — agreed, in conference with members from the other house, that Lawrence's claim was not a valid one, and that a full account of the matter should be sent to the crown for its better information.[1] That account was prepared, but there is no proof that it was ever presented. At any rate, the crown continued more persistently than ever to urge Lawrence's claim, and the upper house at last vigorously urged the lower house to yield. But the latter body stood firm. It declared again and again that Lawrence had no right to that license money. It declared that it conceived it to be most contrary to right and reason, and extremely odious to the people to have a tax imposed on a part of them to the enriching of only one, who not so much as set pen to paper for it.[2] It proposed that if it was impossible to pass an act for regulating ordinaries without allowing such an invalid claim, then ordinaries should be made subject to the laws of the mother country; and it successfully sought the appointment of an agent to present the case before the crown.

The agent was not entirely successful, and with the arrival of John Hart as governor, a new claimant for the money appeared. Governor Hart stated that, as he was about to come to Maryland, he had inquired of Lord Baltimore concerning the right to the money accruing from the license of ordinaries.

He said that in reply Baltimore had told him the license money had been given to the secretary not as secretary, but as a relative, and that, should the government be

[1] U. H. J., December 3, 1708. [2] L. H. J., October. 27, 1709.

restored to him, he should take that money as his own. From this Hart contended that the right to the money in question was neither in the secretary nor in the country, but that it was in the crown.[1] In accordance therewith, he made the offer with respect to applying it toward building a house for the governor, with the result already noted.

But the restoration of the proprietary government soon followed, and the lord proprietor and his guardian first gave the license money to the two secretaries, and then requested the Assembly to pass an act appropriating it to that use. At first the lower house refused to do anything of the kind, and gave as a reason for its refusal that, against the most pressing importunities of the late secretary, with an order from the queen in council in his favor, preceding assemblies had maintained that such license money could not be imposed or levied without the consent of the people. That body desired that instead of giving it to the secretaries, it should be used for the support of schools. Finally, however, a compromise was made by passing a bill for giving the money to the secretaries with a preamble in which, after referring to the past debates, and expressing gratitude for what the lord proprietor had done for the Protestants, he was asked to be pleased to accept of the readiness of the Assembly to give him the license money as a grateful acknowledgment of the benefits received for his administration.

That bill became a law and was continued in force by successive revivals until the year 1739. But in that year of loud complaint against the lord proprietor, the bill for continuing it was lost in the lower house by a vote of nineteen to twenty-six. The third intercolonial war then followed; and from the year 1740 until the outbreak of

[1] U. H. J., May 19, 1715.

the fourth intercolonial war that license money was appropriated toward the redemption of bills of credit issued for his Majesty's service in carrying on war. Scarcely had the new lord proprietor, Frederick, in the year 1754, complained of such past appropriations as a violation of his property rights, and instructed his governor to pass no such acts for the future,[1] when the news came of Washington's repulse at the Great Meadows. Thereupon, contrary to his instructions, the governor, with the advice of the council, assented to a bill making a further application of the license money to military objects.[2] Later, just after Braddock's defeat, the lord proprietor himself, temporarily waiving his claim, authorized the governor to assent to a bill giving the license money as an aid against the enemy; and so, until the year 1763, the money continued to be applied toward the redemption of bills of credit that were issued under the provisions of the supply bills passed on this occasion.

As that year approached, the lower house, still holding that the lord proprietor had no right to it, endeavored to have the money applied toward the founding of a college; but to such a proposition the lord proprietor would not even listen. However, there had for some time been little support to this proprietary claim. When, prior to Braddock's defeat, that claim had several times been the insurmountable obstacle to the passing of a supply bill, Governor Sharpe was tempted to cry out against it. In the year 1755, in a letter to his brother John, asking for an opinion as to the matter, he showed that there was much legal sentiment in the province unfavorable to the said claim.[3] One year later, in a letter

[1] Gilmore Papers.

[2] *Supra*, pp. 321, 322.

[3] Sharpe's Correspondence, Vol. I, p. 235.

to his brother William, he complained that had his hands not been tied down by such instructions as empty coffers seemed to have dictated, he should long ago have had a regiment of Maryland troops under his command.[1]

So little was to be said in support of the attitude of the lord proprietor on this matter, that the upper house was forced to reject the bills from the lower house without giving much reason for so doing; while it was vain for the governor to urge the lower house to pass supply bills that did not appropriate the money in dispute. On the other hand, the committee on grievances reported that it conceived that the clause in the secretary's commission, which gave that officer the power of taking to himself the advantage of granting licenses for ordinaries, was creating a monopoly and, therefore, was infringing the rights and privileges of the people of Maryland. The lower house resolved that the lord proprietor had no right to impose or levy by way of fine, tax, or duty any sum of money on any person whatsoever, or take to himself any such fine, tax, or duty without the consent of the representatives in Assembly. That body further resolved that the lord proprietor by accepting the money accruing from the license of ordinaries as a gift from the people, in the way he did in the year 1717, thereby disclaimed all pretensions of right to that money by prerogative; and that by the continuance of that law for many years he had acquiesced in the right of the people to dispose of the said money. The members of the same body also declared to the governor that they were so firmly of the opinion that the money in question belonged by undoubted right to the country that nothing could ever induce them to do anything which might weaken that right.[2]

[1] Sharpe's Correspondence, Vol. I, p. 399 *et seq.*

[2] L. H. J., March 25, 1755.

Action against this claim went farther than the lower house. In the year 1756 so many petitions from the counties complaining of grievances, extortion, and oppression — of which the dispute about the license money was the immediate occasion — poured into Annapolis that the council advised the governor to send circular letters to the magistrates of the several counties to inquire about all seditious reports. However, the passing of the supply bill of this year, by which that money was mortgaged until the year 1763, dispelled the danger of an uprising.[1]

In the year 1764, when the lower house proposed to appropriate the money in question toward completing the governor's house for use as a college building, a majority of the upper house acknowledged to the governor that they thought it could not be applied to a better purpose. By this time, also, Daniel Dulany had declared that he had no idea of a right without a remedy, and that, therefore, he did not see how his Lordship could support any claim or pretension to such an emolument as that arising from licenses for ordinaries. But in reply to these views, the lord proprietor, as if it were a matter of course, only blindly complained of the spirit of innovation, and again instructed the governor to assent to no bill whereby his sole right and privilege of granting licenses for ordinaries, or any other license whatsoever, should in any wise be invaded or drawn into question, without a clause therein to prevent the same from taking effect until he had assented to it.[2]

In this obstinate course, the lord proprietor was, however, no longer to have the support of the governor, the council, or the upper house. When the above instruction was laid before the council, that board appointed a committee to consider the matter. That committee, in its

[1] C. R., May 22, 1756. [2] *Ibid.*, May 23, 1766.

report, gave it as its opinion that neither by the charter nor by any act of assembly was the lord proprietor entitled to the sole right of granting, ordering, and regulating the licenses of ordinary keepers. It stated that it conceived that any person, by the common law of England, might follow the trade of ordinary keeper, as well as any other trade, without the license of the crown, and that the charter did not give the lord proprietor a higher prerogative than belonged to the crown. Consequently, that committee held that "if the lord proprietor had a right" he must have some legal remedy to compel ordinary keepers to obtain licenses; but no such remedy was known to that committee.[1]

When that report had been made, the council informed the governor that they were unanimously of the opinion that the lord proprietor was in no way entitled to the license money accruing from ordinaries, and expressed the apprehension that if his Lordship should still insist upon his claim, it would very much tend to the obstruction of public business and be productive of very great dissatisfaction. The governor forwarded all these opinions to the lord proprietor, and at last the eyes of the blind were opened. The claim that had stood in the way of passing several supply bills was withdrawn as gracefully as possible; and from the year 1768 there was an act of assembly for licensing ordinary keepers, hawkers, pedlers, and petty chapmen which directed that the money arising thereon should be applied toward defraying the public charge.

Similar to the controversy over the claim to the license money, was that over the right to fines and forfeitures. Until the year 1739, fines and forfeitures arising on the breach of almost any one of the penal laws were made payable, by each of such laws, to the lord proprietor; and

[1] C. R., May 27, 1766.

although some of those fines were given to the clerk of the council, no account of them was rendered to the public. To this the lower house at last raised an objection; and, from the year 1739, whenever a bill containing a provision for any penal imposition was before the Assembly, the lower house insisted, usually with success, that the fine should be made payable for the support of government.[1] From the year 1745 that body repeatedly requested the governor to order laid before it an account of all fines and forfeitures that had arisen, from the common law as well as from acts of assembly, and of how the same had been applied toward the support of government. In justification of its calling for such an account, that body declared that it conceived the officers of the proprietor had, under the authority of the laws of the province, taken those fines only in trust and for the benefit of the people among whom they were levied; and that, therefore, the lord proprietor was not at liberty to put them into his own pocket.

After the governor had contended that the lord proprietor had as good a right to the common law fines as the king had to those arising in the courts of Westminster, — for which he was not accountable to Parliament, — the lower house answered that the king supported his own courts, whereas in Maryland the people, and not the lord proprietor, supported the courts.[2] Again, in the year 1766, a committee of the lower house reported that the custom of the English kings had been to use the fines for the support of government, and that when those fines became insufficient for that purpose, Parliament had taken care to have an account rendered of all the crown revenues. And then the report continued as follows: "Nor ought the Pro-

[1] Gilmore Papers.

[2] L. H. J., August 20, 23, and September 2, 1745.

prietor to expect the people here to support the civil Government in every branch thereof, whilst he disposes at his will and pleasure of all the revenues appropriated by the Constitution of the Mother Country to public uses. And although our Ancestors did very improvidently in the infancy of the Country, when these incomes and revenues of the Lord Proprietary arising from the Courts of Justice or otherwise were inconsiderable, make a perpetual provision for many of those expenses; yet when the people are called upon for a further supply toward the support of any of the officers of his Lordship's Government not provided for by perpetual law, your Committee are of opinion that in such case the people have a right inherent in the Constitution to call on his Lordship or his Governor to render an account of the monies arising from those revenues."[1]

Although the account which was asked for was not given, the lower house made investigation for the purpose of ascertaining its amount, and several times refused to allow claims on the ground that they ought to be paid out of the money arising from fines and forfeitures. On that ground, Governor Sharpe was refused payment of £120 sterling that he had given for carrying letters and sending expresses for his Majesty's service during war time.[2] Likewise in the dispute over paying the clerk of the council, the lower house contended that he should be sufficiently paid out of the money arising from fines and forfeitures.

During the eighteenth century, the ill feeling of the lower house toward the members of the council usually exceeded that of the same house toward either the lord proprietor or the governor. As a consequence, no oppor-

[1] L. H. J., November 15, 1766.

[2] Sharpe's Correspondence, Vol. I, p. 395.

tunity of curtailing the income of the council was ever lost. From the year 1671 to the Revolution of 1689, the council was probably paid out of the tobacco duty levied for the support of government. But during the period of royal government, all of the tobacco duty being applied to other purposes, that board was paid out of the poll tax the same when sitting as a council as when sitting as an upper house. Yet, while their pay as an upper house was demanded by a perpetual law, their pay as a council was required by nothing but a precedent, which was liable to be broken whenever the ill feeling toward them should become strong in the lower house.

Such a feeling was provoked the very year in which the proprietary government was restored. For in that year it was learned that Edward Lloyd — who had been president of the council during the five years from 1709 to 1714, when the province was without a governor — had taken both regular pay as a councillor and one-half the regular pay of a governor. The lower house held that as president of the council Lloyd had been, by instructions from the crown, constituted a body distinct from the council, and that, therefore, while he received one-half the regular pay of a governor, he was not entitled to further pay as a councillor. They claimed that for each of the five years an allowance as councillor had been made to him only because he had expressed doubt about his receiving any of the salary usually paid to a governor. When, therefore, they learned that he had been paid both as president of the council and as ordinary councillor, they unanimously resolved that he should pay back to the public the £52 13*s.* 6*d.* and 29,580 pounds of tobacco, which he had received as a councillor during those five years.[1] But the upper house, although acknowledging that they

[1] L. H. J., July 20, 1716; also August 3, 1716.

thought it would have been more generous in Lloyd not to have taken pay as a councillor, contended that he was a member of the council all the time he had acted as its president, and, therefore, that he was entitled to all that he had received. Moreover, Lloyd obtained a letter from the board of trade stating that what he had received was his right.[1] The result was that after the controversy had been continued for about three years, Lloyd died, and the money and tobacco in question were never refunded by his widow.

The course pursued by Lloyd seems, however, to have caused the lower house to give more attention to the question of paying the entire council. In the year 1716 that body ordered its committee on laws to ascertain how the members of the council had been paid previous to the year 1688. At the request of the committee, the matter was deferred till the next session, when it was intrusted to the committee on accounts. But the report, when given, told how from 1671 to 1688 a duty of twelvepence per hogshead had been given to the lord proprietor to enable him in some measure to defray the expenses of government, and in particular to allow convenient salaries to the governor and council.[2] The same committee was then directed to pursue its investigation during the period of the royal government. It did so. And after pointing out that by the act for ascertaining the allowances of councillors and delegates, no allowance was made to the council out of assembly time, it asked the house for direction. But the matter was referred to the next session, and was not taken up again until the year 1723. Then hesitation ceased. By that time dissatisfaction with the bargain for paying quit-rents had begun to arise, and the question of English statutes, as well as the question of

[1] L. H. J., May 30, 1719. [2] *Ibid.*, May 31, 1717.

officers' fees, was arousing the ire of the lower house. On the motion of its committee on accounts that body resolved that no allowance be made to any members of the council for their attendance at that board out of assembly time, except when it should sit as a court of appeals.

A vigorous controversy then ensued. The lower house had the law on its side; and the members of that body seemed to feel that, in taxing the people for the support of the council, they were giving aid to the enemy of liberty. Besides, they held that, as was done from 1671 to 1685, so now, the lord proprietor ought to pay his council out of the duty given him for the support of government. The upper house, on the other hand, had nothing but precedent on its side. But its members contended that the interest of the lord proprietor and the interest of the people were one and inseparable; that they had the welfare of the province as much at heart when sitting as his Lordship's council as when sitting as an upper house of the Assembly; and that they had as good a right to refuse the allowance to the lower house as the lower house had to refuse theirs as a council.[1] So disturbed was the government over this refusal of the lower house, that the governor could not close the session without taking part in the dispute. But his plea was simply that the generosity of the lord proprietor was deserving of a grateful return from the people. He said: "His Lordship has generously sacrificed his private interest for the public good. The most tender endearing father could not do more for his own private family. As his Lordship is so good to the public, there ought to be a grateful acknowledgment of his favors."[2]

The lower house, however, stood firm. The council was obliged to ask the lord proprietor to devise some

[1] U. H. J., October, 1723. [2] *Ibid.*, October 26, 1723.

other way to pay them for their services. Instead of doing so, he urged the lower house to make the usual allowance. Because of this the controversy was continued with renewed vigor in the year 1725. The several messages of that year between the two houses contained much bitter railing with respect to the matter. In one of the last of them the lower house said: "We have done our duty in raising a sufficient support for all the necessary uses of the government, and are under no ties of duty to raise more because those that are raised are not applied to your good liking, once paid well paid. His Lordship who employs you is paid by the people and 'tis no less than unreasonable for you to insist on further dues from the people for the same service."[1]

For ten years from the date of this message the upper house did not much urge its claim, and went without pay as a council. But during one of the last of those years the controversy over English statutes was settled, and the lord proprietor's visit to the province had contributed much toward a better feeling. Accordingly, under these more favorable conditions, the upper house, in the year 1735, renewed its old claim. It met with no success that year, and the outlook was no better the next, until that house refused to pass the journal of accounts unless the regular allowance was made to the council. The lower house held out a while longer. But, again, the upper house declared in yet bolder terms that it would never pass the journal of accounts without the regular allowance for the council.[2] Finally, the lower house yielded so far as to allow the claim for that year and the year immediately preceding.

For the next eleven years, also, such an allowance was made. But the controversy over officers' fees was renewed. So, in 1745, when the question was put in the

[1] U. H. J., November 2, 1725. [2] *Ibid.*, May 4, 1736.

lower house whether the council's allowance should be made, the affirmative received but twenty-seven votes, while the negative received twenty-two. Only two years later, the year in which officers' fees were made subject to law, that allowance was made for the last time. From the year 1748 to the year 1756 inclusive, the upper house would not pass the journal of accounts without the allowance in question. But this time the lower house chose to let the journal go unpassed, and their own services and other public dues go unpaid rather than yield to the council's claim. Still further, from 1750, the allowance was refused not only to the council, but also to the same persons when sitting as a court of appeals. The reasons for not making the allowance were at this time even stronger than they had been in the year 1723. For it was now held that the services of the council were either relative to the lord proprietor's private affairs or to matters of government. If to the former, then it was said to be plain that the people ought not to be burdened to such an end. If to the latter, it was said to be equally plain that they ought not thus to be burdened because already by many acts of assembly fines and forfeitures were given to his Lordship for the support of government, and also because the duty of twelvepence per hogshead on all tobacco exported out of the province was being collected and paid to his Lordship under an act expressly giving it for the support of government.[1] Lastly, it was now held that such an allowance was implicitly denied by the act for ascertaining councillors' and delegates' allowances. In the year 1756 the upper house gave up the contest, or, waiving their claim, passed the journal of accounts without the insertion of the allowance so long contended for; and thereafter the claim was not urged.

[1] U. H. J., November 16, 1753.

But before the dispute with respect to the whole council had ended, another had arisen with respect to the clerk of that board. The lower house knew that this servant of the government was receiving an income out of the fines and forfeitures, and they held that any further pay to him ought to be given by the lord proprietor out of the twelvepence duty for the support of government. Above all, they contended that the people ought by no means to be further taxed in order to pay him a fixed salary, but that, at the most, he should be paid only for particular services after he had rendered an account. To the giving of such an account, however, the upper house objected because thereby the work of the council would be made too public.

As early as the year 1739, the refusal of the lower house to allow certain extra charges of the council prevented the journal of accounts from passing. Then, from 1747 to 1756, a fixed allowance to the clerk of the council seems to have been almost as objectionable to the lower house as was an allowance to the whole council; and in 1756 that house said that to make such an allowance for services annually performed in compliance with laws, without any account of the services ever being laid before them, was a method of expending the people's money to which they could never agree.[1] Yet, although the upper house yielded that year as to their own allowance as a council, with respect to the allowance of the clerk, they, at that time, said, "To speak plainly, which best becomes our station, we insist on your making him the usual allowance, for we are determined never to give it up."[2] The declaration of such a determination had an effect. For the lower house yielded so far as to agree to the allowance up to date. But at the same time that body resolved

[1] L. H. J., May 1. 1756.

[2] *Ibid.*, May 4, 1756.

that for the future no such allowance should be made except on having a particular account laid before them by the clerk of the public services by him done, and that then they would allow only what appeared reasonable.[1]

In accordance with that resolution no allowance was made to the clerk for the next seven years; and as a consequence no journal of accounts was passed, and hence no public debts were paid. Moreover, as those seven years were years of war, and the pay of the militia fell largely into arrears, the situation was all the more serious. Both houses of Assembly, therefore, began to approach the question in earnest. In the year 1763 the lower house said to the upper house: "Your Honors no doubt well know that the monies received by the Proprietary from the people of this province for the support of government (whether justly or not alters not the case) are much more than sufficient, after all other expenses to which they ought to be applied are defrayed, to make the Clerk of the Privy Council a full compensation for his services; and we cannot imagine but that his Lordship will be generous enough to do it, as his salary stands upon the same foundation with your Honor's allowance as a Privy Councilor, the claims of which you have thought proper lately not to contend about. Public credit is reduced to so low an ebb that we think the world must look upon it as the highest injustice in your Honors further to postpone the payment of the public debt because we will not tax the people for the payment of a salary to the Clerk of the Privy Council, who we do unanimously contend ought together with your Honors as Privy Councillors to be satisfied out of the moneys collected by the Proprietary from the people for the support of the Government of this Province."[2] Farther on in the same message, an offer

[1] L. H. J., May 15, 1756.

[2] *Ibid.*, November 25, 1763.

was again made to allow the clerk for such of his charges as should appear reasonable after he should have laid a satisfactory account of them before the lower house. But on this occasion the upper house would make no concession.

Two years later the situation was brought nearer to a crisis when it was reported that several hundred men, many of them armed with guns and tomahawks, were about to march to Annapolis in order to remove the obstacle to the payment of the public creditors, first, by compelling the clerk of the council to relinquish his claim with a threat to pull down his house if he did not, and, then, by forcing the upper house to pass the journal without the allowance in dispute.[1] It was said that, upon the mere hearing of this report, the clerk was so terrified that he desired the upper house to waive his claim. But although some of the men did appear in the city, no violence was done, and the upper house continued firm during their presence.[2] However, only a few days later, the upper house proposed the passage of an act for paying an agent for each house who should lay the subject-matter of the controversy before the king in council; and to put a stop to the complaints from the public creditors, the same house proposed that all should be paid except the members of the two houses and the clerk of the council, who should wait until a decision of the question by the king in council had been received. But to this proposition, the lower house replied: "Suppose the matter should be determined in our favor by the King and Council, as we really think it would, ought the country to pay the expense of a government agent? You might as well contend for the propriety of a man's being obliged, before he should be allowed to prosecute or defend his

[1] L. H. J., December 10, 1765.

[2] Sharpe's Correspondence, Vol. III, p. 253.

right, to supply his adversary with money to carry on the contest against himself."[1]

Again, the next year, 1766, the lower house referred to the distressed circumstances of the province, which were ascribed to the destitution of many public creditors and to the great need of a circulating medium. In view of such alleged conditions that house asked for a conference. Then, after that had been agreed to, the conferees from the lower house proposed that bills of credit be emitted not only to the amount of the public debt, but also to the amount of the claim in dispute and a further sum of £1500; that the public debt be paid in bills of credit; that a sum equal to the amount of the disputed claim be put into the hands of the treasurers and by them placed out at interest; that the principal and interest be paid to the clerk of the council or his representative, in case the king in council should so order, otherwise, that such principal and interest should be and remain the property of the public; and that the said sum of £1500 be paid to the order of the lower house to enable that body to employ an agent at London for three years.

But the lord proprietor had for a long time insisted that the people of Maryland should not be permitted to tax themselves for the support of an agent who should represent them before the home government; and, hence, the upper house could but reject the above proposition. That body, however, now instructed its conferees to submit three propositions to the conferees of the lower house: first, that an appeal be made to the king in council, that a sum of money, sufficient to cover the cost to the upper house in prosecuting the appeal, be paid to the order of the president of the council, and that a like sum, to cover the cost of such an appeal by the lower house, be

[1] L. H. J., December 17, 1765.

paid to its speaker; second, that the appeal be made and prosecuted without the allotment or application of any money for that purpose; third, that all public debts, including the back claims of the clerk of the council, should be at once paid, but that for the future the clerk should be paid, in fees subject to the regulation of the governor and council. If either the first or the second proposition were agreed to, then all public debts, not including the claim in dispute, were to be paid as soon as convenient; a sum, equal to the amount of the claim in dispute, was to be paid into the hands of one of the treasurers and placed by him on good security at interest, and the principal and interest was to be accounted for to the clerk or his representative or as the property of the public in such manner as the king in council should be pleased to order or direct.[1]

The lower house chose to agree to the second proposition, resolved that Charles Garth should be appointed its agent, and appointed a committee to transmit to him a full account of the dispute, to receive contributions, and to have the management of a lottery whereby to raise money for paying him. Furthermore, that house resolved that its committee should have free access to all papers, books, and records in any of the public offices; and to encourage the necessary response from their constituents, the same body, in one of its resolutions, declared that they had a firm reliance on the public virtue and spirit of their constituents to move each and every one of them to contribute something toward paying the agent.[2]

A considerable sum was raised by subscription, but the lottery was no success.[3] The committee was refused

[1] U. H. J., November 19, 20, and 21, 1766.

[2] L. H. J., December 6, 1766.

[3] Sharpe's Correspondence, Vol. III, pp. 348, 356.

access to the council records; but such a refusal was what the committee desired in order that it might report the same to the agent, Garth, who was directed in the first place to petition the crown for an order to permit the lower house to support an agent by a tax. Yet that order was never received, and the appeal with respect to the clerk's claim was never prosecuted. That claim provoked little dispute in the Assembly after 1766; but still it was one of the unsettled questions when the proprietary government was overthrown. It must have been that the people had little hope that the king in council would decide the case in their favor.

The opposition to a poll tax for the support of the council and its clerk arose not only out of the claim that the members of that board ought to be paid out of the duty for the support of government or out of the fines and forfeitures, but also from the fact that the members of that board held so many of the most important offices and thereby had a lucrative income from fees, the amount of which the lower house could not reduce below what those officers, as members of the upper house, would agree to. For, both as a council and as an upper house, those officers held that whenever the amount of those fees was not determined by an act of assembly, the lord proprietor, or the governor in council, had the right to fix their amount by the issue of an ordinance without any voice of the lower house in the matter. The consequence was that no other contest was waged so vigorously or for so many years as that about officers' fees.

Although there was no express provision in the charter with respect to fees, it was with good reason held that the right to fix their amount was incidental to the lord proprietor's authority by charter to constitute offices and appoint officers. Yet there was a clause in the charter

restraining the lord proprietor or his officers from the issue of any ordinance which should, "in any sort, extend to oblige, bind, charge, or take away the right or interest of any person or persons, of, or in member, life, frechold, goods, or chattels."

In practice, except during the years from 1639 to 1642, fees were fixed in amount by the governor and council, from the founding of the colony until the year 1650. But in that year the Assembly began to limit the fees of the secretary and the sheriffs, and a little later those of other officers. By the year 1669 the complaint that excessive fees were taken contrary to acts of assembly was numbered among the list of grievances presented by the lower house.[1] Instead, however, of having that grievance redressed that year, those who presented it were told that it was the right of the lord proprietor to settle the amount of all fees by proclamation, and the lower house was at that time too weak to offer further resistance. But seven years later, while still allowing that the lord proprietor had the right to fix their amount, that house requested that a list, as fixed or approved by him, be laid before it in order that it might draw up a bill for an act against extortion. The request was granted and an act was passed embodying the lord proprietor's list and forbidding any officer to charge fees in excess of what was named in the act, the duration of which was unlimited.[2]

Little further attention seems to have been given to this subject until after the Revolution of 1689. Then, the first royal governor, at the time of his appointment, was instructed to regulate them with the advice of the council. But early in the first session of assembly that was con-

[1] Proceedings and Acts of the General Assembly, 1666 to 1676, pp. 169, 176.

[2] *Ibid.*, pp. 498, 499, 532.

vened by the first royal governor, the lower house took a firm stand in this matter. Instead of consenting to leave the regulation to the governor and council, that house was unanimous in its declaration that it was the undoubted right of the freemen of Maryland that no officers' fees should be imposed upon them but by consent of their representatives in assembly, and that such liberty was established by several acts of parliament.[1] The outcome was that the governor at once agreed that no fees should be either lessened or increased without the consent of the Assembly; and an act for their limitation was passed which varied little from the act of 1676, except that it was made temporary instead of perpetual. It was to continue only three years or to the end of the next session. It was, however, from time to time revived and continued in force, with but little change, until the year 1719. In the year 1704, the lower house asked for a reduction in the table of fees, but the upper house refused to agree thereto, saying that they were not greater than the services required. Again, ten years later, after the lower house — complaining that many of the fees were exorbitant and tended to oppression — had passed a bill for reducing them, the upper house rejected it on the ground that if passed into a law it would discourage men of good learning and integrity from accepting some of the inferior offices and lower the state and dignity of some of the superior officers.[2]

The officers' pay in fees was, however, increasing from year to year with the slow increase in population, and by the year 1719 the lower house had become firm in its determination that the fees in the table of the old law should be reduced. That body accordingly passed a bill which

[1] Proceedings and Acts of the General Assembly, 1684 to 1692, pp. 294, 382.

[2] U. H. J., June 29, 30, 1714.

provided for a reduction of all fees about twenty-five per cent, and justified its action on the ground that even after such a reduction the total income from fees would still be greater than what it had been when the old law was first made. The governor and the upper house asked that the old law be continued for one year longer, until the lord proprietor should be of age and probably be present in the province. But the lower house declared that the fees, as fixed by the old law, were so great and oppressive to the inhabitants, that they would rather be without any law for regulating them than to continue the old one any longer. Whereupon the upper house rejected the bill and expressed its views as follows: "We can't but think you too positive in resolving to deprive the country of the benefit of the former law made for the purpose (which we can't but think has been very useful in restraining the several officers from charging and extorting excessive fees and making them liable to a prosecution and penalty for so doing). Although we are of opinion, as well as you, that some of the fees allowed several officers by the former law are too highly rated and may be reduced, we think that the regulation proposed in your bill does so much abridge the perquisites of some of those offices as not to afford a sufficient support for the characters and stations of the persons who execute them. Besides, we conceive we should make a very ungrateful return to his Lordship and our Governor for the many favors we acknowledge to have received from them if we should at once so extravagantly lessen the revenues of those offices which are their immediate dependencies, and as we are a part of the Legislature for this province we think we have a right to interpose our opinion, and that such a regulation would have been much more properly made by a joint committee. In fine, gentlemen, we hope we have the interest of our country as much at heart as

you, and in discharging our duties believe we ought not to oppress the poor nor do injustice to the rich, but to pay a just regard to all degrees of men by divine Providence established amongst us." [1]

After receiving the above message, the lower house asked for a conference, to which the upper house consented. At that conference it was agreed that the fees of the chancellor, sheriffs, coroners, clerk of the court of appeals, and the criers of the provincial court and of the county courts should remain as fixed by the former law, while the fees of the secretary, commissary general, surveyor general and his deputies, the clerk of the council, and the clerks of the county courts should stand reduced according to the table prepared by the lower house.[2] This compromise was embodied in the bill, the duration of which was limited to three years and to the end of the first session of assembly thereafter, or to the end of the first session of assembly that should be held after the lord proprietor's arrival in the province. That bill became a law. On the ground that it was for his honor and for the people's interest that the income of the public ministers should be large enough to encourage industry and integrity in men of ability to administer the offices of government, and on the ground that as people and plenty in a country increase, so ought the rewards of those who for their care, knowledge, and integrity are employed in the several offices of government, the lord proprietor threatened to disallow it.[3] But to that threat the lower house made reply in the following words: "We are sensibly touched on account of the seeming dissatisfaction which your Lordship is pleased to express on account of the late regulation of officers' fees, being firmly assured

[1] U. H. J., June 4, 1719. [2] *Ibid.*, June 5, 1719.
[3] *Ibid.*, April 21, 1720.

were your Lordship truly apprized of the large sums the fees of the several officers amount unto, your Lordship would in all probability incline to assent to that regulation which we may justly affirm by the good number of people in the province amounts to much more than they did when the former act was made which in the judgment of every distinguished person here are abundantly sufficient for the honorable support of your Lordship's great officers, a handsome maintenance to the lesser, and a sufficient encouragement to every one of them to discharge the duties incumbent on him."[1] Furthermore, the same house later declared that fees were not so great in Virginia as in Maryland.

In spite of the fact that the lord proprietor continued to express dissatisfaction with the fees as established by the law of 1719, the lower house, in the year 1724, proposed that public dues and officers' fees should be reduced one-half.[2] As the upper house regarded this proposal most unreasonable and unbecoming the justice and honor due from a legislative power, no reduction of fees was made that year. But the next year after the lower house had passed a bill for the reduction of fees, about twenty-five per cent below what they were by the law of 1719, it was with but little discussion passed by the upper house and signed by the governor.[3] It seems that the upper house was at this time greatly disgusted with the farmer-like view of many of the delegates, who thought and declared that there was no reason why an officer should be paid much, if any, more than a common laborer. Under such conditions, that house thought best not to offer any opposition to the new fee bill until it came before the lord proprietor, and then to present him with

[1] U. H. J., October 27, 1720. [2] L. H. J., October 16, 1724.
[3] U. H. J., November 3, 1725; Dulany Papers.

an address asking for his veto. This was done, and not only was the veto given, but the governor was instructed to pass no bill which should reduce fees below what they were under the law of 1719.[1]

That veto was received by the people with considerable murmuring,[2] but it was in vain that the lower house several times passed other bills, providing for a like reduction. Not even in the year 1728, when the bill was before the Assembly for raising the price of tobacco by limiting the number of plants, was the attempt to decrease the quantity of tobacco to be paid in fees successful.[3] A conference at that time agreed upon a table in which many of them were reduced below that at which they had been fixed in the act of 1725, and then further agreed that if the tobacco bill should be passed, people should have the privilege of paying their fees in tobacco with an additional reduction of one-third. But the upper house rejected what was proposed in the report of the conference.[4] It held that since the price of tobacco had fallen since 1725, fees ought to be increased rather than lessened, especially since the lord proprietor had vetoed the act of that year for the reason that it too much reduced the fees; and as to the one-third reduction in case the tobacco bill was passed, the same house held that, even with such a law, the price of tobacco might not advance in some years, and hence that it would be time enough to lessen the fees after an advance had been made in the price of that commodity. On the other hand, such a view of the situation, by those who were the officers, aroused strong feelings among the representatives of the people, who now declared that the fees, as proposed in the report, were sufficient for a decent maintenance; that the circumstances

[1] Gilmore Papers.
[2] Dulany Papers.
[3] *Supra*, p. 112.
[4] U. H. J., October 22, 1728.

of the country made it their imperative duty to avoid as much expense as possible; that the fall in the price of tobacco was no reason for increasing the fees unless such a fall enabled the people to make a greater quantity of it; and that if the sinking of the value of tobacco were a reason for the augmentation of officers' fees, and they were accordingly augmented, it was to be feared that the officers would have all the tobacco, and the planter and his wife and children go naked. As to the lord proprietor's veto of the act of 1725, the same representative body at this time said: "We beg leave to observe that it was upon the partial representation of some officers, and we can't entertain a thought so injurious (in our opinion) to his Lordship's humanity and honor as to suspect his Lordship would support a few officers upon the ruin of the people of Maryland." Finally, they concluded by saying: "We entreat your Honors to consider what a miserable condition people must be reduced to who can hardly support themselves with necessaries by the produce of what is left them when they are at full liberty to make what they can, if their crops should be reduced to two-thirds of what they now make, they be obliged to pay the same levies and other dues and fees they are now obliged to pay, and have nothing left to support themselves and families but what would remain after such payments, and whether it is not agreeable to natural justice that officers who are to be supported by the labor and industry of the people should not make an abatement of their income proportionate to what the people are obliged to make in hopes of a rise in the price of tobaccos, and run the same hazard with their supporters as to the event."[1]

The upper house yielded to the entreaty so far as to agree to a limitation of fees like that in the act of 1725,

[1] U. H. J., October 22, 1728.

and a bill embodying such a proposed limitation passed both houses. But the governor, obedient to his instruction, withheld his signature. The next year the lower house endeavored to have a like bill passed again; but while the upper house acknowledged that the want of a law for regulating fees was an inconvenience to both officers and people, it declared it to be useless for the two houses to pass any bill which reduced them below what had been prescribed by the law of 1719. Whereupon, the members of the lower house unanimously resolved that they were of the opinion that the fees settled by the act of 1725 were full and ample rewards for the several services to be done for the said fees.

It appears that before the end of the year the officers were no less concerned about the regulation of fees than were the people. For although charges continued to be fixed according to the law of 1719, — which had expired in 1725, — the governor at this time wrote to the lord proprietor that, since the veto of the act of 1725, officers had been very ill paid to the disregard of their offices, since every insolent fellow thought himself free to refuse payment, and browbeat, as it were, the officers. He further complained that to have them regulated by act of assembly was out of the question, because the lower house was determined to diminish them until the pay of officers should be reduced to the mean wages of the commonest writing clerks. Then he inquired if the charter did not give the lord proprietor the right to regulate them by proclamation.[1] The result was that after another unsuccessful attempt of the Assembly, in the year 1732, to pass a fee bill, the lord proprietor, with the advice of the council, issued a proclamation, in the year 1733, for fixing their amount very nearly the same as it had been in the

[1] Calvert Papers, No. 2, p. 76 *et seq.*

regulation of 1719, and for enabling the officers to collect them by the issue of a writ of body execution ;[1] and such a quieting effect did the lord proprietor's visit to the province at this time have, that there was generally peaceful submission to that proclamation until the year 1738.

However, in the years 1735 and 1736, the lower house gently sought the regulation of those fees by act of assembly instead of by proclamation. Then, in 1738, the storm burst forth again with full force. There was general complaint against the writ of execution. The committee on grievances reported that the fees, as established by the proclamation of 1733, were burdensome, great, and oppressive, to the discouragement, ruin, and undoing of many of the inhabitants, and that even the said color of power was exceeded by the unlimited will of many of the officers. In the same report — in the interest of having fees made payable in the paper currency — the committee observed that many poor tradesmen and artificers, who made no tobacco, were compelled to buy it at excessive and exorbitant prices to the ruin of many families and their entire extirpation out of the province and the discouragement of those who remained to follow their useful arts, labor, and industry. Finally, that committee stated that it conceived that, by the common and statute law of England, such like fees were settled and regulated by courts of justice or by acts of parliament ; that, from the earliest settlement of Maryland by British subjects, fees had been adjusted and regulated by acts of assembly ; and, therefore, that such proclamations were invasions on the fundamental constitution of the province under the royal charter and against the lawful rights and liberties of his Majesty's subjects in Maryland.[2]

[1] C. R., April 14, 1733 ; Dulany Papers. [2] L. H. J., May 16, 1738.

The next year the lower house ordered five of its members to prepare a fee bill, and, in so doing, to have regard to the fees settled in Virginia and Pennsylvania.[1] But after the bill thus prepared had passed the lower house, the upper house rejected it and declared that the lord proprietor's authority to settle fees was indisputable, and that the complaint about fees arose for the most part from the clamors and uneasy disposition of restless and turbulent persons, without any just foundation.[2] Although a conference was agreed to a little later, the conferees from the upper house were instructed to agree to no bill for the establishment of fees that did not provide for making their regulation perpetual. Because of that instruction, the conference accomplished nothing; and, after it had ended, the lower house resolved that, in safety to themselves, their constituents, and posterity, they could not agree to a perpetual law for the limitation of fees. They declared that they were clearly of opinion that the execution of such powers by the lord proprietor as the upper house contended were vested in him, was without foundation and inconsistent with the liberty, property, and quiet of his Majesty's liege subjects in Maryland.[3]

The committee on grievances then made the same report as that of the previous year; and finally, on this occasion, in an address to the governor containing a long list of grievances, the members of the lower house delivered themselves as follows: "The power assumed of late by his Lordship's settling and ascertaining the fees of the officers in the Courts of Justice by way of Proclamation is what we cannot submit to, without prostituting the rights of his Majesty's Subjects within this Province. We do not know that even the Kings of Great Britain

[1] L. H. J., May 4, 1739. [2] *Ibid.*, May 30, 1739.
[3] *Ibid.*, June 2, 1739.

exercised their Prerogative in such cases, especially since the happy Revolution. And on this occasion we entreat your Excellency to consider that part of the Royal Charter which directs that no ordinances made by the Proprietary or his Heirs, their Magistrates or Officers, without consent of the Freemen or their Delegates, shall affect the right or interest of any person or persons of or in their life, member, freehold, goods, or chattels, which clause is consonant to the Great Charter to the benefit whereof we hope we shall not be denied a right. However, to avoid all disputes on this head, we had with great pains and application prepared a bill for settling fees and made them considerably higher than those of our neighboring colonies, yet we cannot obtain the consent of his Lordship's Council to the same without such conditions as would in our apprehension prove destructive to the people for reasons your Excellency cannot be a stranger to, viz., that of making it a perpetual law; and how reasonable it is that the Gentlemen of that Board, who without any warrant from the Royal Charter assume a negative on the proceedings of the Delegates of this Province, and whose seats at that Board are only at the will of the Right Honorable the Lord Proprietary, and who (with a single exception only) are composed of such as hold the chief offices and posts of profit in the Government during pleasure, the exorbitancy of whose fees, illegally charged, and the oppressive manner of extorting them from the people, was what was endeavored by that bill to be remedied, how far we say they ought to be judges and have a negative in an affair wherein they are so deeply interested we leave to our Superiors and the world to judge."[1]

But it required more than this appeal to prevail upon

[1] L. H. J., June 5, 1739.

the other branches of the legislature to yield sufficiently to make a law for the limitation of fees. For the next few years it appeared to be in vain that the lower house renewed its attempt to have a bill passed for that purpose. Yet the crisis was approaching. The time was not far distant when the officers, the council, the upper house, felt that it was to be either a limitation of fees by an act of assembly or the ruin of the province. They chose the former. In the year 1743 Daniel Dulany and the governor and council made their long representation of how the tobacco industry of Maryland was alarmingly threatened with ruin ; how the only way to save it was to pass an inspection act; how the question of officers' fees was the great obstacle to the passing of such an act, and, therefore, how the refusal to permit those fees being lessened would render the officers odious to all mankind and occasion the imputing of the calamity of the country to them.[1] The outcome was that, two years later, all branches of the legislature were desirous of coming to an agreement with respect to fees. Although the upper house rejected the first fee bill of the session of 1745, it declared upon that occasion that it was most sincerely disposed to concur in any measures that might conduce to the ease and happiness of the people. The lower house thereupon asked for a conference, and the upper house consented. The duration of the proposed bill was next agreed to. But although the conferees from the upper house agreed to a reduction of fees, twenty per cent from what they were fixed at in the lord proprietor's proclamation of 1733, the conferees from the lower house insisted that the fees, as settled in Virginia and Pennsylvania, should be laid before the conference as a guide. As the upper house refused to agree to this, on the ground that in Pennsylvania fees were paid

[1] *Supra*, pp. 114–116.

in money at the time of the service with no expense for collection, and that in Virginia the population was so much the larger, this conference broke up without reaching an agreement. Later in the same session, however, another conference agreed to nearly the same regulation that the members from the upper house had offered at the first conference. A bill, on the basis of this agreement, passed both houses; but the governor, as he had threatened, withheld his assent to it because the lower house had not passed an acceptable bill for the purchase of arms and ammunition.[1] Yet, finally, in 1747, nearly the same agreement was embodied in what became a law for the inspection of tobacco and the limitation of officers' fees, and this law was by successive revivals continued in force for twenty-three years.

Until almost the end of that period the fee question seems to have received but little attention except that the new lord proprietor, Frederick, instructed the governor to permit no encroachment on his power and authority to regulate fees, and except that the lower house occasionally made investigation as to the amount of the several incomes from fees. But late in the year 1769, when the act of 1747 was about to expire, it was revived to continue in force till October 1, 1770. At the session in which the law was thus revived, the committee on grievances reported cases of excessive charges of fees in Charles and Prince George's counties, gave it as their opinion that officers in general paid too little regard to the established regulation, and recommended that the delegates, after investigating the matter, should bring to the next session a report by counties of all exorbitant charges.[2]

Accordingly, when the Assembly met the next year, 1770, the lower house was firmly resolved upon war

[1] *Supra*, pp. 84, 301. [2] L. H. J., December 19, 1769.

against fees. It appointed a committee to ascertain the amount of fees that had been due each officer for the past seven years. It appointed another committee to prepare a new bill, and resolved itself into a committee of the whole to consider a new regulation. After the first committee had made a report, which showed that the annual income from fees of the greater offices had increased more than fifty per cent since the year 1747, and after the house had sat several days in a committee of the whole, that body unanimously agreed upon a new table of fees.[1] That table was soon completed, and in it some fees were reduced. But it was claimed to have been the principal care of those who made it, to prevent charges where no services were performed, to prevent double charges for the same service, and to prevent evasion of the law through ambiguity of expression. The upper house, nevertheless, rejected the new table and asked for a continuance of the old, with no changes except to give a reduction in the case of immediate payment, and to offer an option of paying in either money or tobacco at the rate of twelve shillings current money for one hundred pounds of tobacco. Then, as that was not agreed to, the same house proposed that a salary of £600 sterling be given to the secretary, the commissary general, and the judges of the land office. But that was also refused, both on the ground that it was too high and on the ground that officers would not perform their duties with as much diligence when paid a fixed salary as when paid for each particular service.

Many messages on the subject of fees, all indicative of strong feelings, passed between the two houses. The members of the upper house were not at all disposed to agree upon either fees or salaries that would not be

[1] L. H. J., October 3, 12, and 13, 1770.

favorable to themselves as officers, because they felt that, in case no agreement was reached, they would, as a council, advise the governor with respect to issuing a proclamation like that of the year 1733. On the other hand, after the failure to have fees fixed and regulated according to their new table, the members of the lower house suspected the design of issuing the proclamation. Accordingly, they, beforehand, vigorously declared themselves against the illegality of the same, as if in the hope of preventing its issue. They ordered the report of the committee on grievances of the year 1739 against the proclamation of 1733 to be again entered on the journal. They passed the two following resolutions: "Resolved, unanimously, that the Representatives of the Freemen of this Province have the sole right with the assent of the other part of the Legislature to impose Taxes or Fees; and that the imposing, establishing, or collecting any Taxes or Fees on or from the Inhabitants of this Province under color or pretence of any Proclamation issued by or in the name of the Lord Proprietary, or other authority, is arbitrary, unconstitutional, and oppressive."[1]

"Resolved, unanimously, that in all cases where no Fees are established by Law for services done by Officers, the power of ascertaining the quantum of the reward for such services is constitutionally in a Jury upon the Action of the Party."

It was at this time, also, that they committed to prison the clerk in the land office merely because, in obedience to instruction from the judges of that office, he had charged fees according to the old table.[2] A little later that same house made the following declaration to the governor, "The Proprietor has no Right, Sir, either by

[1] L. H. J., November, 1, 1770.

[2] *Supra*, pp. 73, 208.

himself, or with the advice of his Council, to regulate the Fees of Office; and could we persuade ourselves that you could possibly entertain a different opinion, we should be bold to tell your Excellency that the People of this Province ever will oppose the Usurpation of such a Right." Finally, as if to direct the hostility of the people against the council, they struck a severe blow at the upper house in one other resolution, which was in the following words, "Resolved, *nemine contradicente*, that the Upper House, four members of which hold the Secretary's, Commissary General's, and Land Office, . . . have in the intercourse between the two Houses on the subject of Fees manifested an unreasonable attachment to the emoluments of office and evinced an unjustifiable design to force this Branch of the Legislature by the feelings of the People into a regulation of Fees more corresponding to those Schemes of Wealth and Power which it is to be much apprehended are formed by some of the great Officers of this Government, and which, if carried into execution, will tend to the oppression of the People, and, in the end, greatly endanger their Liberties."[1]

Nevertheless, the governor and council were not thus prevailed upon to refrain from the unpopular course; and five days after the Assembly was prorogued, the proclamation appeared.[2] It was dressed in the thin disguise of an instrument designed to prevent oppression; but in reality it authorized officers to charge fees according to the table in the recently expired law. As a consequence, when the Assembly was again convened, the following year, the proclamation was the principal subject before the lower house, and it was chiefly with the governor that that body held intercourse with respect to the same. Eight days after the opening of the session, the committee

[1] L. H. J., November 8, 1770. [2] *Ibid.*, October 17, 1771.

on grievances reported that fees, as then paid, were excessive and oppressive. At the same time, whatever could be found in English statutes, the Maryland charter, and acts of the assembly against such proclamation was collected. Later, resolutions were passed declaring that the proclamation was illegal, arbitrary, and oppressive, and that the members of the council, who advised the governor to issue it, were enemies to the peace, welfare, and happiness of the province and the laws and constitution thereof. Then, in an address to the governor, they gave a long argument against the proclamation. They declared that in England fees had been established and regulated by act of parliament, but that they had not found a single instance of any proclamation by the king of England for levying the salaries or ascertaining the fees of officers. They also cited 34 Edward I, Chapter I; Coke's interpretation of the word "Tallagium"; William and Mary, Chapter II; Section VIII of the Maryland charter; and the journals of the Assembly for the year 1692, as abundantly sufficient to prove that the proclamation was opposed to the law and custom both of the province and of the mother country. They contended that when there was no law for determining what fees might be demanded, they were recoverable only after a jury had fixed the amount, upon an action of the party.

Then they continued as follows: "Permit us to entreat your Excellency to review this unconstitutional assumption of power and consider its pernicious consequences. Applications to the public offices are not of choice, but of necessity. Redress cannot be had for the smallest or most atrocious injuries but in the courts of justice. And as surely as that necessity does exist, and a binding force in the proclamation be admitted, so certainly must the fees thereby established be paid in order to obtain redress.

In the sentiments of a much approved and admired writer, suppose the fees imposed by this proclamation could be paid by the good people of this province with the utmost ease, and that they were the most exactly proportioned to the value of the officers' services, yet even in such a supposed case, this proclamation ought to be regarded with abhorrence; for who are a free people? Not those over whom government is reasonably and equitably exercised, but those who live under a government so constitutionally checked and controlled that proper provision is made against its being otherwise exercised. This act of power is founded on the destruction of this constitutional security. If prerogative may rightly regulate the fees agreeable to the late inspection law, it has a right to fix any other quantums; if it has a right to regulate to one penny, it has a right to regulate to a million; for where does its right stop? At any given point? To attempt to limit its right after granting it to exist at all is as contrary to reason as granting it to exist at all is contrary to justice; if it has any right to tax us, then whether our own money shall continue in our own pockets or not depends no longer on us but on the prerogative; there is nothing which we can call our own. . . . The forefathers of the Americans did not leave their native country and subject themselves to every danger and distress, to be reduced to a state of slavery." Finally, they stated that they apprehended the proclamation had been issued on the advice of some of those whose interest in the fees, which they had thus attempted illegally to establish, ought to have excluded them from his Excellency's confidence; they asked that the names of those ill advisers who had "daringly presumed thus to tread on the invaluable rights of the freemen of Maryland" should be made known; and they requested that the minds of the

people might be quieted by the speedy withdrawal of the proclamation.[1]

In his reply, the governor pointed out that, by the laws of the province, no action could be brought before a jury unless the value in dispute was equal to six hundred pounds of tobacco or fifty shillings current money.[2] He showed that in some of the provinces under the government of the English crown fees were established by the royal prerogative. He held that in the lord proprietor's right to constitute offices and appoint officers was implied the right to determine what rewards those officers should have. He found precedent in the province in support of his right to issue the proclamation. And in conclusion he said: "I did not determine to issue my proclamation till after the most mature consideration it appeared to me to be a measure not only lawful but necessary, not only what I might but what I ought to pursue. . . . So clear is my conviction of the propriety and utility of a regulation to prevent extortion and infinite litigation, that instead of recalling, if it was necessary to enforce it, I should renew my proclamation, and, in stronger terms, threaten all officers with my displeasure, who shall presume to ask or receive of the people any fee beyond my restrictions."[3]

An unsuccessful attempt was made at this session and at each of the two following ones to pass a fee bill. But after the above reply was made by the governor, the most important discussion, on that burning subject, was no longer carried on in the halls of the Assembly, but appeared in the columns of the *Gazette;* and the most turbulent demonstrations provoked by it, were made at the polls.

In regard to no other questions were the contradictions of the Maryland charter more involved. Both sides could

[1] L. H. J., November 22, 1771. [2] *Supra*, p. 241.
[3] L. H. J., November 30, 1771.

cite authority. But while those who stood for the prerogative were the more moderate, and relied almost solely on the law and the custom of the past, those on the other side had more enthusiasm and were fighting against what popular leaders, not only in Maryland but in England and her other colonies, had fully determined to tolerate no longer than was necessary.

The two principal men engaging in this controversy, through the columns of the *Gazette*, were Charles Carroll against the proclamation, and Daniel Dulany in defence of it. The former signed himself, "The First Citizen"; the latter, "Antilon."

Carroll was a member of a wealthy Catholic family that from the beginning of the century had led the opposition to the Protestants. In the year 1765 he had returned to the province, after an absence of sixteen years devoted to study and travel. His religious faith, his long period of training, and his natural endowments — especially his ready pen — made him a fearless, a formidable antagonist.

Daniel Dulany was the son of that able lawyer who had led the lower house to victory in the contest with the lord proprietor over the right of the people of Maryland to the common and statute law of the mother country. The younger Dulany had been thoroughly educated in England. By the skill, weight, and force of his argument against the Stamp Act, he had won for himself the reputation of being the most able man in the province. Especially was he looked upon as a high authority in legal matters. For a few years after the repeal of the Stamp Act he was exceedingly popular. But when it came to pass that his influence in the council was thought to control the governor, when he held the lucrative office of secretary, while his brother Walter held the next most lucrative office, that of commissary general, when two other

relatives of his were given seats in the council, when territorial affairs were again brought under the control of that board, and when he resisted with all his might the further reduction of fees and advised the governor to regulate them by proclamation, his popularity vanished.

Carroll's first article, which appeared February 4, 1773, had a powerful effect, not because it contained any logical argument against the illegality of the proclamation, but because of its incendiary nature. It was clearly understood to whom he referred when he charged that a push was being made to find offices for certain persons so that all power might be concentrated in one family. He expressed a fear that even a perpetuity of office might be aimed at. Adopting the principle that the king can do no wrong, he threw all the blame on the council. "Government was instituted for the general good," he continued, "but officers intrusted with its powers have most commonly perverted them to the selfish views of avarice and ambition; hence the country and court interests, which ought to be the same, have been too often opposite, as must be acknowledged and lamented by every true friend of liberty. . . . I have known men of such meanness and such insolence (qualities often met with in the same person) who would wish to be the first slave of a Sultan to lord it over the rest; power sir, power, is apt to pervert the best of natures; with too much of it I would not trust the milkiest man on earth; and shall we place confidence in a minister too long inured to rule, grown old, callous, and hackneyed in the crooked paths of policy?" He declared that by the loss of the inspection act Maryland tobacco had fallen into disgrace in foreign markets, and that, as a consequence, every man's property was decreasing and mouldering away. Finally, he told the people that the general welfare had been sacrificed in order to

preserve from diminution the salaries of a few officers, who, in advising the governor to regulate fees by proclamation, had advocated a measure like those which cost King Charles I his crown and his life.

The spirit in which these sentiments were received by some of the party of discontent may be seen in the following words of a letter from the "Independent Whigs," to "The First Citizen": "We thank you for the sentiments which you have spoken with an honest freedom. We had a long time impatiently waited for a man of abilities to step forth and tell our daring ministers in a nervous style, the evils they have brought upon the community, and what they may dread from an injured people, by a repetition of despotic measures. While we admire your intrepidity in the attack, permit us to applaud that calm and steady temper, which so precisely marks and distinguishes your excellent performance. . . . Go on, Sir, and assert the rights of your country: every friend to liberty will be a friend to you. Malice may rage, and raw heads and bloody bones clatter and rattle; but the honest heart bold in the cause of freedom feels no alarm."

It was two weeks after Carroll's attack before Dulany made his defence of the proclamation. He began by saying: "The restriction of officers' fees (on the falling of the Inspection Law), by the Governor's Proclamation, has been represented to be a measure as arbitrary and tyrannical as the assessment of ship money, not by fairly stating the nature of each transaction, and showing the resemblance by comparison, to convince the understanding; but in the favorite method of illiberal calumny, virulent abuse, and shameless assertion, to affect the passions. Inveterate malice, destitute of proofs, has invented falsehood for incorrigible folly to adopt, and indurated impudence to propagate. As the artifice to

raise alarm can succeed only in proportion that it deceives, it will be my endeavor to counteract the pestilent purpose by presenting to the reader, for his candid examination, an impartial account of the ship money and the proclamation."

He then proceeded to show that after Charles I had bound himself, in answer to the Petition of Right, not to levy any tax on the people without the consent of both houses of Parliament, he became determined to rule without a Parliament, and then, by recourse to his prerogative, began to levy the ship money on the false pretence that it was needed for defence.

But as for Governor Eden's proclamation, Dulany contended that it did no more than to restrain officers from taking more than was prescribed by the old table, which was the most moderate of any ever established in the province. Furthermore, he stated that the proclamation was binding only in so far as it was legal, and that the question as to its legality was determinable only in the ordinary courts of justice. He was also pleased to suggest that if the king could do no wrong, appeal be made to him.

This defence called forth the superior ability of the assailant; and in his second article Carroll stated that he proposed to show that the issue of the proclamation was contrary to the spirit of the Maryland constitution. He declared that he could not believe that the avowed motive of issuing it was the real one. He pointed out that, in submitting the question of its legality to the courts, the judges would be one of the interested parties. He said that to decide it was legal, would rob the lower house of the right to settle fees with the concurrence of the other branches of the legislature, and that, as fees were taxes, this would overthrow the fundamental principles of the constitution.

His exact words on these last two points were: "Reasons

still of greater force might be urged against leaving with the judges the decision of this important question, whether the supreme magistrate shall have the power to tax a free people without the consent of their representatives, nay, against their consent and express declaration I shall only adduce one argument to avoid prolixity. The Governor, it is said, with the advice of his Lordship's Council of State, issued the Proclamation. Three of our Provincial justices are of that Council; they therefore advised a measure as proper, and consequently as legal, the legality of which, if called in question, they were afterward to determine. Is not this in some degree prejudging the question? It will perhaps be denied (for what will some men not assert or deny?) that to settle the fees of officers by Proclamation, is not to tax the people; I humbly conceive that fees settled by the Governor's proclamation, should it be determined to have the force of law, are to all intents and purposes a tax upon the people, flowing from an arbitrary and discretionary power in the supreme magistrate — for this assertion, I have the authority of my Lord Coke, express in point — that great lawyer, in his exposition of the statute *de tallagio non concedendo*, makes this comment on the word *tallagium* — 'Tallagium is a general word and doth include all subsidies, taxes, tenths, fifteenths, impositions, and other burthens of charge put or set upon any man, that within this act are, all new offices erected with new fees or old offices with new fees for that is a tallage put upon the subject, which cannot be done without common consent of Parliament.' The inspection law being expired, which established the rates of officers' fees, adopted by the Governor's proclamation, I apprehend the people (supposing the proclamation had not issued) would not be obliged to pay fees to officers according to rates; this proposition I take to be self-evident.

Now, if the proclamation can revive those rates, and the payment of fees agreeable thereto can be enforced by a decree of the chancellor, or by judgment of the provincial court, it must clearly follow that the fees are new, because enforced under an authority entirely new, and distinct from the act by which those rates were originally fixed. Perhaps my Lord Coke's position will be contradicted, and it will be asserted that fees payable to officers are not taxes; but on what principle such an assertion can be founded, I am at a loss to determine; they bear all the marks and character of a tax; they are universal, unavoidable, and recoverable, if imposed by a legal authority, as all other debts. . . . One would imagine that a compromise, and a mutual departure from some points respectively contended for, would have been the most eligible way of ending the dispute; if a compromise was not to be effected, the matter had best been left undecided; time and necessity would have softened dissension and have reconciled jarring opinions and clashing interests; and then a regulation by law, of officers' fees, would have followed of course. What was done? The authority of the supreme magistrate interposed, and took the decision of this important question from the other branches of the legislature to itself; in a land of freedom this arbitrary exertion of prerogative will not, must not, be endured."

He then broke forth in a furious personal attack on Dulany, as the chief author of the grievance, saying: "Dismayed, trembling, and aghast, though skulking behind the strong rampart of Governor and Council, this Antilon has intrenched himself chin deep in precedents, fortified with transmarine opinions, drawn round about him, and hid from public view, in due time to be played off, as a masked battery, on the inhabitants of Maryland."

Dulany replied; but, in doing so, he added little to his

former arguments. How thoroughly the discussion had aroused the voters of the province, is seen from accounts of the election of delegates, held in the month of May of this year. After the closing of the polls in the city of Annapolis and in the northwest counties, a tumultuous crowd made that proclamation an object of derision by performing some ceremony as if to seal its doom. To the sound of muffled drums, with the proclamation in a coffin, with banners that bore inscriptions condemning it, with weapons of war and with a grave digger, the march was made from the polls to the gallows, where the offensive document was hanged, cut down, and buried, the ceremony being accompanied by a discharge of musketry. At the same time the newly elected delegates were instructed by their electors to return thanks in the name of the public to "The First Citizen" for the patriotic stand which he had taken; and it was in compliance with such an instruction that Paca and Hammond, delegates from the city of Annapolis, wrote to him the following: "Your manly and spirited opposition to the arbitrary attempt of government to establish the fees of office by proclamation justly entitles you to the exalted character of a distinguished advocate for the rights of your country. The proclamation needed only to be thoroughly understood to be generally detested, and you have had the happiness to please, to instruct, to convince, your countrymen. It is the public voice, Sir, that the establishment of fees by the sole authority of prerogative is an act of usurpation, an act of tyranny, which, in a land of freedom, cannot, must not, be endured."[1]

But in the face of all this demonstration the upper house remained firm, and the governor did not withdraw the proclamation. The only marked advance of the opposition, after the election, was that made in another

[1] *Maryland Gazette*, May 20, 1773.

Gazette article, signed by Thomas Johnson, Samuel Chase, and William Paca, in which these gentlemen contended that the ultimate authority was to be found, not in the king, but in the freemen of Maryland, who were to pronounce final judgment upon any great question in such successive elections of delegates as should follow a reasonable number of dissolutions of the Assembly. It is not improbable that the proclamation, had the proprietary government continued a few years longer, would have fallen before this view as to the ultimate source of authority; but, as it was, discontent was in a measure temporarily pacified by the revival of the old inspection act, without the table of fees, and then the Revolution soon followed.

CHAPTER VI

LOCAL GOVERNMENT

Maryland was too small a province for the question of local government to rise to first importance; and yet the lack of facilities for intercourse strengthened the people's desire for decentralization in the administration of public affairs, especially of those pertaining to justice.[1] Like that of the Palatinate of Durham, this province was originally organized as the government of a single county, the local divisions of which were the hundreds and the manors. And in those early days a hundred was erected by the governor and council only as there was occasion for it, through the growth of a new settlement; while a manor was erected only when there was a grant of a large tract of land.

But from the time Kent Island was reduced to submission, the settlement or group of settlements on the eastern shore was governed more and more like that of a separate county. The formal erection of counties began in the year 1650; and four years later the county had become the unit of representation in the central government, as well as the principal civil division for carrying into execution the will of that government. The number of counties increased from three, in the year 1650, to fifteen, in the year 1773. Each of the several counties, soon after its formal erection, was divided into hundreds; and with the

[1] *Supra*, pp. 237–241.

increase in population each of the larger or more populous hundreds was divided, and, in some cases, even subdivided. So that, while in several of the older counties there were originally only four or five hundreds, by the middle of the eighteenth century there were in most of the counties from ten to fifteen; and in Frederick County the number, by the year 1775, had increased to twenty-seven. The erection of manors was continued until toward the close of the seventeenth century. Very soon after the establishment of the royal government, the ten counties — all that had up to that time been erected — were divided into thirty parishes. Through the erection of new counties, and the division of some of the old parishes, the number, by the year 1770, had increased to forty-four. The erection of towns by general town acts was begun in the year 1683, and by particular town acts, in the year 1728. From the year 1670 there was one city.

The local organs of government were, therefore, the county, the hundred, the manor, the parish, the town, and the city. With the exception of the erection of one county by act of assembly, and the acts for the erection of towns,— the first and principal one of which was passed only after persistent urging and whipping by the lord proprietor, — the right of establishing local bodies, previous to the Revolution of 1689, was exercised only by the lord proprietor or by the governor and council. But after that revolution not one of such bodies, except the hundred, was established without the authority of the General Assembly; and from that time the hundred was erected not by the governor and council, but by an order of the county court.

The county was an organ through which a great variety of functions were performed. As already stated, it early succeeded the hundred as the unit of representation in

the popular branch of the legislative Assembly. It was only by counties that the freemen ever instructed their delegates to that Assembly. The militia was organized and trained by counties. The county was the unit for the apportionment and the collection of taxes. The county court, with its four sessions a year, was an important organ for the administration of justice. The same court performed a variety of administrative functions that were other than strictly judicial. The justices of that court advised the sheriff with respect to the day on which the election of delegates should begin; and they sat with him during that election. They divided the county into hundreds and highway precincts. They laid out the first ten counties into parishes, and afterward settled disputes relating to parish boundaries. They heard and answered petitions for the laying out of new highways. Once a year they appointed a constable for each hundred and an overseer for each highway precinct. To them the tobacco inspectors were required to render accounts; and for misbehavior they could remove an inspector from office. They bound out orphan children as apprentices. In some of the counties they engaged a physician to care for sick paupers. They granted petitions and made appropriations in the county levy for the support of the poor and needy. They exempted paupers and superannuated slaves from the poll tax. In a few cases they directed the sheriff to sell insolvent debtors into servitude. In some counties they occasionally directed a church vestry to sell an immoral woman and her children into slavery. They provided the county with the standard of weights and measures. They licensed keepers of ordinaries. They paid bounties for the killing of bears, squirrels, and crows. They paid out, annually, several thousand pounds of tobacco in prizes for the best pieces

of linen manufactured within the county. They let contracts for the keeping of ferries and the erection and repair of county buildings. They, in answer to petition from the vestry and church wardens, levied a tax, not exceeding ten pounds of tobacco per poll, upon the taxable inhabitants of the parish. They, by act of assembly of the year 1704, were authorized to levy such taxes as were necessary to defray "the several and respective county charges."

In interpreting the above words of the act of 1704, a dispute arose as to the extent of power conferred by it. The court of Prince George's County, late in the year 1747, passed an order for levying one hundred thousand pounds of tobacco with which to repair the courthouse. The cry at once arose that if the execution of such an order was to be permitted, there might soon be taxation without representation. It was contended in several articles published in the *Maryland Gazette* that it was not the intention of the act to authorize a county court to levy taxes other than for small charges.[1] The basis of this contention was found in English custom, precedent established by the several county courts, the act of assembly that limited the parochial tax to ten pounds of tobacco per poll, and the limitation of the jurisdiction of county courts in civil cases. The result was that less than one year after the order of the Prince George's County court was passed, the General Assembly, by passing a supplementary act to the act of 1704, declared that the original act should not be construed to give the county justices power to levy taxes for defraying other than the "ordinary, usual, and necessary charges annually arising." At the same time that body much more definitely limited

[1] *Maryland Gazette*, January 20, February 10, March 16, 23, April 13, 20, 27, May 4, 11, and June 4, 1748.

the power in question by authorizing those justices to levy a tax not exceeding ten thousand pounds of tobacco for the full and complete repairing of the courthouse, not exceeding six thousand pounds for the repairing of the prison, not exceeding eight thousand pounds for the repairing of any one bridge, and not exceeding twenty thousand pounds for the building of a new bridge. A larger sum for any of the above purposes was to be levied only by authority of a special act of the General Assembly.

Each county cared for its own poor; but no almshouses and workhouses were built until the year 1768, when an act of assembly made provision for such houses in each of five counties, and before the Revolution of 1776 the poor of two other counties were likewise provided for. Five trustees, forming a close corporation, were put in charge of this new institution. No trustee was obliged to serve longer than five years; and, being discharged in rotation, they were to choose a successor to one of their number at the end of every year. They were to meet four times a year for the transaction of business. When they had purchased the land and built and furnished the houses, they were to appoint an overseer, who was to serve during their pleasure. Lastly, the trustees were to compel the poor to work, and in this they were to be aided by both sheriffs and constables.

The only other county institution was the county school, the management of which was intrusted to seven visitors. These officers also formed a close corporation. They bought the land, erected the school building, made the necessary rules and regulations, employed the schoolmaster. They also appointed a register, who kept an account of all their proceedings and submitted to the General Assembly an account of their application of the school money.[1]

[1] *Supra*, pp. 140–144.

In the early days, the hundred was the unit of representation in the General Assembly. It was, also, in those days, the principal organ for military service, taxation, the administration of justice and police regulation. Each hundred then had its military band, which was trained by the sergeant. The view of arms and ammunition was taken by hundreds. For service in garrison or in any expedition against the Indians, each hundred was required to contribute its quota of men and submit to taxation for the maintenance of the same. In the year 1649 an order of assembly directed that once a month, for five months, the freemen of each hundred might assemble at some appointed place and there pass such orders and ordinances as they should judge necessary for their defence. Then, too, each hundred had one or more justices of the peace and a constable.

With the erection of counties the importance of the hundred declined, and for a long time was little more than a constablewick. The constable, however, continued to perform important services. He prepared the list of taxables. He was present at every session of the county court to give information to the grand jury. He was authorized to execute all warrants directed to him by the justices of any court and to arrest every person charged with a breach of the peace. If an offender resisted, he was to raise the hue and cry and give chase. Especially was he directed to raise the hue and cry for the pursuit of murderers, thieves, other felons, and fugitive servants. He must assist in executing the acts of assembly against profane cursing, swearing, and drunkenness. He was to do what he could to prevent the tumultuous meeting of slaves.

As had been the custom in the mother country, so, in some measure, in Maryland, every hundred was repre-

sented at the county court. It was so represented by its constable. It had one or more representatives among the grand jury, and the governor, in appointing the county justices, may have sought to give each hundred a representative in that body.

With the political awakening in the eighteenth century, the freemen of the hundred became more and more conscious of themselves as a body politic. Occasionally they held a meeting of their own to discuss political affairs. Now and then a petition had its origin in such a meeting. Finally, when the great contest with the mother country came, the hundred became the useful organ which it had been in the early days. It was in their respective hundreds that the freemen met and formed themselves into companies for military service in that great conflict. Subscriptions for raising the necessary money were taken under the direction of committees in the several hundreds.[1] The committee of observation in each of the several counties was in large measure composed of men representing the several hundreds. In February, 1775, at a meeting of the freemen of Frederick County, it was resolved that the voters of each hundred of that county should elect a number of the members of the committee of observation that was in proportion to its number of taxables: one, if the number of taxables did not exceed 200; two, if the number of taxables was between 200 and 400; and three, if the number of taxables exceeded 400.[2]

The formation of large estates in England during the Middle Ages resulted in the inclusion of many hundreds within manors; and so, in the early days of Maryland, whenever the estates were large, were inhabited by several

[1] *Maryland Gazette*, January 5 and 12, 1775.
[2] *Ibid.*, February 2, 1775.

tenants and servants, and the owners were separated by wide intervals from other habitations, there was reason for erecting such estates into manors and thereby intrusting the owners with local jurisdiction. But as the province became more thickly settled, and especially as slaves supplanted the tenants and servants, that institution fell into disuse.[1]

The officers of the manor were the steward, the bailiff, the constable, and two affeerors. The steward was appointed by the lord of the manor; but it is probable that all the other officers were chosen in court by the resident freemen. The whole body of resident freemen sat at one and the same time both as a court baron and as a court leet. A freeman who was absent was subject to a fine of one hundred pounds of tobacco, payable, as were other fines, to the lord of the manor. The steward presided as judge. Twelve of the freemen served both as a grand jury and as a petty jury. Whenever the fine imposed by the judge or jury was thought excessive, it was revised by the affeerors. Stocks, pillory, and ducking stool were provided as instruments of justice by a general contribution throughout the manor. The civil duties of the bailiff and the constable were probably similar to those of the sheriff in the county and of the constable in the hundred. Besides transacting its judicial business, the court passed some legislative measures.

Of the few extant records of the manorial courts of Maryland, the following items serve to illustrate the more characteristic practises of this antiquated institution: "Martin Kirke took of the lady of the manor in full court, by delivery of the said steward, by the rod, according to the custom of the said manor, one message, etc., and so the said Kirke having done his fealty to the lady, was thereof admitted tenant."

[1] *Supra*, p. 52.

"We present an alienation from James Edmonds to Thomas Oakley upon which there is a relief due to the lord, and Oakley hath sworn fealty."

"The jury presents Robert Cooper for cutting of sedge on St. Clement's Island and fowling without license, for which he is amerced ten pounds of tobacco."

"We present Luke Gardiner for catching two wild hogs and not restoring the one-half to the lord of the manor, which he ought to have done, and for his contempt therein is fined two thousand pounds of tobacco; afferred to two hundred pounds of tobacco."

"We present John Mansell for entertaining Benjamin Hamon and Cybill his wife as inmates. It is therefore ordered that the said Mansell do either remove his inmates or give security to save the parish harmless by the next court under pain of one thousand pounds of tobacco."

"We present Humphrey Willy for keeping a tipling house and selling his drink without a license at unlawful rates, for which he is fined according to act of assembly in that case made and provided."

"We present that Thomas Rives hath fallen five or six timber trees upon Richard Foster's land within this manor, referred till view may be had of Rive's lease."

"We present that John Blackiston hunted John Tenison's horses out of the said Blackiston's cornfield fence, which fence is proved to be insufficient by the oaths of John Hoskins and Daniel White."

"We present Joshua Lee for injuring John Hoskins his hogs by setting his dogs on them and tearing their ears and other hurts, for which he is fined one hundred pounds of tobacco and cask."

"We present also a Cheptico Indian for entering into Edward Turner's house and stealing a shirt from thence, and he is fined twenty arms length if he can be known."

"We present also the King of Cheptico for killing a wild sow, taking her pigs, and raising a stock of them. Referred to the honorable the Governor."

"We conceive that Indians ought not to keep hogs, for under pretence of them they may destroy all the hogs belonging to the manor; and therefore they ought to be warned now to destroy them, else to be fined at the next court. Referred to the honorable the Governor."

"We do further present that our bounds are at this present time imperfect and very obscure. Wherefore with the consent of the Lord of the Manor we do order that every man's land shall be bounded, marked, and laid out between this and the next Court by the present jury with the assistance of the lord upon pain of two hundred pounds of tobacco for every man that shall make default."[1]

The first church act, passed in the year 1692, directed that the justices of each county, with the aid of such principal freeholders as they might appoint, should divide and lay out their county into as many parishes as in their discretion should be thought convenient. The result of this direction was that, by the year 1696, four of the counties had been divided into four parishes each, two into three each, and four into two each. When a parish was once laid out, it could not be divided or have its boundaries changed without authority given by an act of assembly.

The officers of the parish were six vestrymen at least, — of whom the minister was one, — two church wardens, a clerk, and a register. By act of 1692 the vestrymen were chosen by the freeholders. When once chosen, there was nothing in that act to prevent their continuing in office for life or until they ceased to be residents of the parish, and vacancies were to be filled by the remaining members. But by the act of 1702 the taxable freeholders of the parish were

[1] Mayer, "Ground Rents in Maryland," pp. 151–157.

each year, after asking any two of the vestrymen to retire from office, to elect two others to succeed them. Finally, an act of 1730 directed that they should retire in rotation, two each year, and that for three years after retiring they should not be liable to reëlection. Until the year 1702 the church wardens were chosen by the vestry alone ; but by the act of that year they were thereafter chosen by both the vestry and the other taxable free-holders. The clerk was appointed by the minister ; the register, by the vestry.

The vestry was a corporate body for the holding and the disposal of church property and for the acceptance of bequests. It was required to meet regularly on the first Tuesday of every month. It and the church wardens were required to attend to the building and the repair of the church or chapel and to pay all parochial charges. The church site, however, might be chosen by the whole body of parishioners ; and the vestry could not choose the minister, for this was a right exercised by the governor. When necessary, the vestry and church wardens could request the county court to levy a tax on the taxable inhabitants of the parish, not exceeding ten pounds of tobacco per poll. If a larger sum was needed, they were obliged to present a petition to the governor and council, who laid it before the General Assembly. In the year 1758 the General Assembly passed an act to empower the justices of Charles County to levy on the taxable inhabitants of Port Tobacco Parish in their county no more than two pounds of tobacco per poll, annually, for the support of an organist in said parish. Again, in the year 1774, another such act provided for the support of an organist in one of the parishes of St. Mary's County. The register kept a record of all births, deaths, marriages, and vestry proceedings. These records the parishioners

might inspect; and, at any time, they might appeal to the governor and council against a vestry act.

It was the duty of the vestry to labor for the suppression of immorality; to that end it was required to set up in the church a table of marriages; and with the same purpose it sometimes reported its incorrigible cases to the county court. As stated above, that court sometimes decreed that the vestry should sell an immoral woman and her children into slavery. Furthermore, the vestry was required to perform some duties that were wholly secular. When an attempt was made to limit the number of tobacco plants, the vestry chose men to do the counting. Under the inspection act, each vestry was to nominate for every tobacco warehouse in its parish four men for inspectors, from whom the governor was to choose two. And by the supply act of 1756, which taxed bachelors, the vestry and church wardens of each parish were required to prepare a list of all their bachelors of twenty-five years of age and over, setting forth the value of each one's estate.

The powers of the vestry in church affairs were, therefore, very limited. It was tied down close to the will of the central government on the one side and to that of the parishioners on the other. Neither were its duties in secular affairs of a nature to bring popularity upon those discharging them. The consequence was that the office of vestryman was not a coveted one. In the year 1728 the lower house unanimously resolved that it was a grievance that there was no act of assembly for fining those vestrymen who refused to serve; and two years later the Assembly fixed the fine for such an offence at one thousand pounds of tobacco.

Effort after effort was made to promote the growth of towns; but every such effort was powerless to overcome natural obstacles. When a regulation of the tobacco in-

dustry had become much needed, the governor, in the year 1668, issued a proclamation naming thirteen places for ports and forbidding shipment from any other place or places under pain of one year's imprisonment. In each of the years 1669 and 1671 a similar proclamation was issued; but the government was unable to enforce such measures.

The governor, Charles Calvert, however, upon becoming lord proprietor, was still persistent and hoped that the end might be attained through a legislative enactment. Accordingly, in the year 1682, the upper house passed such a bill as he and the council proposed. The lower house referred it to a committee. That committee proposed several amendments. Members of the upper house then joined the said committee. The upper house again passed the bill as amended by the joint committee. But after the lower house had twice read the amended bill, that body voted that many other amendments were necessary, and asked that the whole matter be referred to the next session. The upper house, however, was not willing to give it up. A conference of all the members of both houses was agreed to. But in that conference the lower house stated that the lord proprietor in his speech at the opening of the session had made no mention of the need of any such bill; and then insisted that it be permitted "to preserve its privileges, and not be further pressed upon new matters." At the opening of the next session, in the year following, the lord proprietor did not fail to mention the matter. The upper house then proposed that it be considered by a joint committee, and to that end each house appointed two members. A bill was framed in which some of the places proposed for towns were named by the committee, and others by the lord proprietor. The lower house expressed its approval of the bill, but declined to pass it except on condition that the upper

house would first pass the bills for levying war and for the election of delegates, and that the lord proprietor would also give his assurance that he would sign the same. The naming of such conditions thoroughly incensed the lord proprietor. He ordered the lower house to be called before him, gave to it a free expression of his sentiments, whipped it into line; and the result was that the bill was passed before that day's adjournment. Yet the obtaining of a law by means of such pressure was not necessarily much of an advance upon the proclamation.

Thirty-one town plots, of one hundred acres each, were to be laid out; and shipping from any other place or places within the province was forbidden. Three supplementary acts, passed before the Revolution of 1689, increased the number to fifty-seven. Many, if not all, of the proposed towns were actually laid out; but in the year 1692 both the principal and the supplementary acts were repealed.

The next town act, passed in the year 1694, provided for the erection of only two towns, — Anne Arundel, on the western shore, and Oxford, on the eastern shore. A collector and a naval officer were to reside in each; and to the one or the other of them ships were to come for entering and for clearing. The following year the name Anne Arundel was changed to Annapolis, and Oxford to Williamstadt. Still one year later Annapolis was made an incorporated town, and in 1708 it was incorporated as a city.

Another general town act was passed in the year 1706, and two supplementary acts were passed the following year. These acts provided for the laying out of about fifty town plots of one hundred acres each. They directed that ships and vessels should unload at some one of the said towns, but placed no restriction as to the place of loading, and the crown disallowed them.

Such were the last general town acts; and there was

no further town legislation of any kind until the year 1728. But from that year until the middle of the century many an act was passed for the laying out of some particular town, or for laying out anew some town that had formerly been platted under direction of one of the general acts. By direction of such particular acts, each of the following towns was laid out in the year indicated: Leonard-Town in 1728; Charles-Town in Charles County and Baltimore-Town in Baltimore County in 1729; Cecil-Town and Chester-Town in 1730; Ogle-Town, Jones-Town, Salisbury-Town, Kings-Town, Benedict Leonard-Town, and Bridge-Town in 1732; Jansen-Town and Princess Anne-Town in 1733; Frederick-Town in Cecil County and George-Town in Kent County in 1736; Snow Hill-Town, Bladensburgh, and Charles-Town on Northeast River in 1742; Baltimore-Town and Newport-Town in Worcester County and Upper Marlborough-Town in Prince George's County in 1744; Princess Anne-Town in Somerset County in 1745; and George-Town in Frederick County in 1751. But, again, several of these towns, although laid out by direction of a particular act, would not grow; others grew so little that it did not become necessary, after they were once laid out, to separate the government of them from the government of the county in which they were located; and so, in only a few cases, was a town government instituted.

In the general town acts, twenty-four commissioners in each county were directed to lay out the several towns within their county; but each of those acts, after the first one, permitted the commissioners of each county to divide themselves into committees, and the committee composed of members living nearest to a place named for a town were authorized to superintend the laying of it out. In the particular town acts, special commissioners were

directed to lay out the one town named. Squares were marked off in each town for a church, chapel, market-house, and other public buildings. In Williamstadt, in Annapolis, and in Charles-Town on Northeast River, from one hundred to three hundred acres were purchased for the town commons. The lots were always made equal in size, usually a little less than one acre each. The general town acts directed that one hundred acres should be laid out for every town; but by the several particular acts the size of the town plots varied from twenty to five hundred acres. The general acts forbade any person to purchase more than one lot in any one town within four months from the time the town was laid out; but in the several particular acts the time during which this restriction was to continue varied from four months to three years. All acts for laying out towns required that he who took up a lot should complete the building thereon, within a specified time, — usually one year, — of a dwelling house covering at least four hundred square feet of ground, or forfeit his title to the lot. Some of the particular acts further required that the chimney of the dwelling should be built of brick or stone. Finally, nearly all the particular acts forbade the town inhabitants to allow cattle, horses, sheep, hogs, or geese to run at large within the town.

In many of the towns, the lack of inhabitants left little for the commissioners to do after the town was once laid out. But in Annapolis, before it became a city, in Baltimore-Town, in Frederick-Town, and in Charles-Town on Northeast River, the powers and duties of those officers grew with the development of a town government. By act of 1696 eight commissioners were made a corporate body known as the commissioners and trustees for the port and town of Annapolis. In that capacity they could

sue and be sued. They were empowered to make such orders and by-laws as were consonant and agreeable to the laws of England and the acts of the Maryland Assembly. They were constituted the justices of the town court, and were empowered to appoint the clerk and the crier of that court. As justices, they were empowered to hear and determine any civil case arising between any of the townsmen in which the value in dispute did not exceed £5 sterling or one thousand pounds of tobacco; they were also authorized to punish misdemeanors and breaches of the peace, not extending to life or member, committed within the said town. And they were empowered to make, erect, and constitute a market to be held once every week and a fair to be held every year at such time and place as they should think most convenient — persons coming to such market or fair not to be subject to arrest except in case of treason, murder, or felony. To fill a vacancy in the said corporate body — caused by death, resignation, or change of residence — the resident freemen were to elect one who possessed the qualifications required of each delegate to the lower house of the General Assembly.

Even down to the Revolution of 1776 no other town government in Maryland was so fully organized as was that of Annapolis before it became a city. However, by the middle of the eighteenth century, the commissioners of Charles-Town on Northeast River had been authorized to lay out money for the erection of public buildings. They had been directed to meet on the tenth day of May each year, to view and perpetuate the boundary marks between lots, and to inspect and inquire into the management of the wharf and store houses. They had been directed to fix the wharfage and storage rates. They had been authorized to appoint a clerk, a viewer of flour, a wharfinger and storehouse keeper, and an overseer of

highways. It was the duty of the clerk to keep a record of their proceedings. It was the duty of the viewer of flour to brand all flour shipped; and a fine of one shilling was to be imposed for every condemned barrel. It was the duty of the overseer, at such times as he or the commissioners should appoint, to require the male inhabitants of the town to assist in cleaning the streets, or in the building of bridges and causeways — a fine of five shillings to be imposed for every day's neglect to obey the summons of the overseer. For a time the committee filled all vacancies in their own number; but as soon as there were twenty residents who were qualified to vote for delegates to the lower house of the General Assembly, those vacancies were to be filled by election.

A more evident advance in town government one may expect to find in the thriving town of Baltimore. Only sixty acres were laid out for that town in the year 1729; but in the year 1745 it and Jones-Town were incorporated as one. The act by authority of which this was done and one other act, passed two years later, further directed that the commissioners should meet at least once a year to see that the boundary marks of each lot were kept up and preserved. They were authorized to settle any dispute about such boundaries. With the consent of the owners of adjacent lots, they might widen or otherwise alter any lane or alley. They were given power not only to appoint and to remove the town clerk, but also, for his pay, to levy, assess, and take by way of distress, if necessary, from the inhabitants of the said town, by equal and even proportion, £3 yearly. They were given power not only to make rules and orders for the holding of two annual fairs, but also for the improvement and regulation of the town in general, provided they were not inconsistent with the laws of Maryland and the statutes and customs of

Great Britain. Lastly, they enjoyed the privilege of filling vacancies in their own number.[1]

The development of town government involved by no means a strong movement toward decentralization. Not one of the towns was given the privilege of sending delegates to the General Assembly; and only in two instances were the townsmen permitted to elect either their principal or their lesser officers. Of town meetings like those in New England there were none. However, with the increase of business, the powers and duties of the commissioners were extended. They were made a corporate or a *quasi*-corporate body, and were given the right of appointing the other town officers. The General Assembly interfered little in a direct way with the management of town affairs, other than to pass laws for the establishment and regulation of a market in Baltimore-Town, in Frederick-Town, and in Chester-Town. The Frederick-Town market act, for example, directed that the market hours should be from morning until noon on Wednesdays and Saturdays. All victuals and provisions brought to town for sale (except fish, oysters, grain, flour, bread, butter in firkins or other vessels exceeding twenty pounds net, cheese, pork by the hog, beef or pork in barrels or larger casks, live cattle, sheep, and hogs) upon those days, or any other days, were to be carried to the market house. No one was to buy out of market during market hours. The justices of the county court were to appoint a clerk of the market, who was to rent the stalls and destroy anything unwholesome.

[1] An act of 1771, to prevent the exportation of non-merchantable flour staves, and shingles, and to regulate the weight of hay and the measure of grain, salt, flaxseed, and firewood, directed the commissioners to appoint an inspector of flour, from one to three persons to cull staves and shingles, from one to three persons to measure grain, salt, and flax, and from one to five persons to weigh hay and cord wood.

The cities of the province were St. Mary's and Annapolis; with the erection of the latter, however, the former ceased to be. The charter of St. Mary's was granted by the lord proprietor, or his governor, in the year 1670. All of the provisions of that charter are not known; yet the extant records show that the city had its mayor, recorder, aldermen, and common council; that the mayor's court was held by the mayor, recorder, and aldermen once a month; that the same officers, together with the council, made by-laws; that the constable was an important officer for executing those by-laws, and that the corporation chose two delegates for the General Assembly.[1]

In the winter of 1694–95 the seat of the provincial government was moved from the city of St. Mary's to Anne Arundel-Town, later named Annapolis, and the consequence was that the first city lingered but a few years, and then disappeared. The second, Annapolis, was erected in the year 1708, when Governor Seymour, with no direction from the crown for so doing, granted its charter. A mayor, a recorder, six aldermen, and ten common councilmen were made a corporate body with capacity to sue and be sued. The mayor was to hold office for a term of only one year, and his successor was to be chosen from among the aldermen by all the members of the corporation. The recorder, the aldermen, and the common councilmen were to hold office during good behavior, and a vacancy in any of those offices was to be filled by the remaining members of the corporation. The recorder was always to be a lawyer; an alderman was always to be chosen from among the common councilmen; and a common councilman was always to be chosen from among the freemen of the city. The mayor, the recorder, and the aldermen were the justices of the peace, and also jus-

[1] Proceedings of the Council, 1681 to 1685–86, p. 418.

tices of the court of hustings, and were given power to appoint the other necessary officers of that court; for the first six years, however, the sheriff of Anne Arundel County was to act as sheriff of Annapolis, and after that, the entire corporation was to appoint one. The mayor, the recorder, the aldermen, and five senior common councilmen were to choose the city's two delegates to the General Assembly.

The corporation was given power to make by-laws and ordinances for regulating trade, and for good government within the precincts of said city; but every such law or ordinance was to be agreeable to the laws in force within the province. It could, also, impose a penalty, not exceeding forty shillings, when necessary to secure observance of its laws or ordinances. It was permitted to hold two markets weekly and two fairs yearly. It was empowered to set a toll on goods, cattle, and merchandise sold at the fairs, not exceeding sixpence on every beast, or the twentieth part of the value of any commodity. It was empowered to hold a court of piepowder during the said fairs for the determination of all controversies and quarrels, according to the usual course in England in such like cases. And it was permitted to enjoy the profits of such markets, fairs, and court. The court of hustings — held by the mayor, recorder, and aldermen, or any three of them — was given cognizance of cases of trespass and ejectment, of cases arising out of writs of dower, and of all other actions personal and mixed in which the value involved did not exceed £6 10*s.* or seventeen hundred pounds of tobacco.[1]

The General Assembly met in the month following the grant of this charter; and the lower house, contending

[1] The original charter is in the land office at Annapolis; the Chancery Records, preserved in the same office, contain a copy of it.

that the governor had no right to grant it without an order from the crown, expelled the two delegates elected under it, and especially complained because the members of the corporation alone, instead of all the freeholders, had been given the right to elect those delegates.[1] When the house remained firm, the governor dissolved the Assembly. But in the month following that dissolution, the governor was presented with a petition, signed by the corporation and the greater part of the other inhabitants of the city, in which he was asked that the two delegates, and those who were to fill vacancies in the common council, should be elected by a vote of all the freeholders of the city. Also in this petition those were designated as freeholders who owned a lot of land with a house built thereon, according to law; or those who actually resided in the city and had a visible estate of £20 sterling; or those who, having served five years at any trade in the city, had become householders and inhabitants of the same.[2] Although the governor granted the prayer of this petition, when the Assembly had again met, the newly elected house asked him to show his authority from the crown for erecting cities. This he could not do; and it was only after a conference of some members from both houses that a compromise was agreed upon, whereby the charter was to be confirmed by an act of assembly. That act, when passed, directed that all public lands and buildings in the city should remain to the uses to which they had been allotted; that the former town judges should hold their courts as usual; that the justices of Anne Arundel County should exercise their usual jurisdiction in Annapolis; that by-laws should be restrained to the residents of the city; and the act also reduced the poll rates to be levied on commodities sold at the fairs.[3]

[1] U. H. J., September 27, 1708. [2] Chancery Records.
[3] L. H. J., December 1, 1708.

CHAPTER VII

RELIGION, THE CHURCH, AND THE CLERGY

The religious disquietude of western Europe, during the seventeenth and eighteenth centuries, exerted a powerful influence in determining the future of America. The prevalence of religious toleration, however imperfect, in the English colonies, as against intolerance in England herself, caused the population of those colonies to increase more rapidly than it otherwise would. At the same time, the strong and highly centralized government of the French Jesuits and the untiring zeal and cunning diplomacy of those religious enthusiasts were well adapted to the winning of Indian alliances. And in the contest of the English and the French for dominion in America, the superior numbers of the former helped to win them success. What is more, religious unrest not only aided the English in getting possession of the country, but in some of the colonies, particularly in Maryland, changes in religious conditions helped to remove obstacles that impeded progress toward a more just, equitable, humane, and beneficent government. The first lord proprietor found so few Catholics whom he could induce to settle in his province that he thought it expedient to encourage Protestants of every denomination by giving them his promise that they should be permitted to enjoy religious toleration. It was, however, too early for perfect religious toleration to be practised; and the result was that the

lord proprietor had trouble first with the Catholics and then with the Protestants. The Protestant opposition grew with the increase in population, and became the occasion as well as one of the deep-seated causes of the Revolution of 1689. As a result of that Revolution, the popular branch of the legislature enjoyed a large accession of power, and the control of the people became more and more extensive. The Protestant Episcopal Church was established by act of assembly. But a divided jurisdiction left it without the necessary government, and the unrestrained immorality of several of the clergy robbed it of power and influence. The consequence was that, although the moral standard of the community suffered a temporary decline, the Maryland legislators were not carried back several thousand years and tied to the law of Moses, nor were they held in terror-stricken suspense by portrayals of a fiery abyss; but the most influential among them, lawyers by profession, felt the pulse of the people, and then strove for such legislation as they judged would be socially expedient. In this manner the chains, which in later mediæval days had bound the end to the beginning, were broken, and the spirit of progress was liberated.

The second lord proprietor, in the year 1678, gave the following account of how his father, forty-six years before, had made his promise of toleration to the first Maryland colonists: "At the first planting of this Provynce by my ffather Albeit he had an Absolute Liberty given to him and his heires to carry thither any Persons out of the Dominions that belonged to the Crowne of England who should be found Wylling to goe thither yett when he came to make usé of this Liberty He found very few who were inclyned to goe and seat themselves in those parts But such as for some Reason or other could not

lyve with ease in other places And of these a great part were such as could not conforme in all particulars to the several Lawes of England relateing to Religion Many there were of this sort of People who declared their Wyllingness to goe and Plant themselves in this Provynce so as they might have a Generall Toleraccōn settled there by a Lawe by which all of all sorts who professed Christianity in Generall might be at Liberty to Worshipp God in such Manner as was most agreeable with their respective Judgm^ts^ and Consciences without being subject to any penaltyes whatsoever for their so doeing Provyded the civill peace were preserved And that for the secureing the civill peace and preventing all heats [and] Feuds which were generally observed to happen amongst such as differ in oppynions upon Occasion of Reproachfull Nicknames and Reflecting upon each Others Oppynions It might by the same Lawe be made Penall to give any Offence in that kynde these were the condicōns proposed by such as were willing to goe and be the first planters of this Provynce and without the complying with these condicōns in all probability This Provynce had never beene planted."[1]

After this agreement had been reached, the first colonists set out for their new home. Of their number ninety were freemen and one hundred and thirty were women, children, and servants; of the freemen, a majority were Catholics, while of the servants, a majority were Protestants. In view of these proportions, and in conformity with the agreement, the lord proprietor instructed the officers, who were Catholics, to cause all acts of the Roman Catholic religion to be done as privately as possible, to be silent upon all occasions of discourse concerning matters of religion, and to give no offence to

[1] Proceedings of the Council, 1667 to 1687–88, p. 267 *et seq.*

Protestants, but to treat them with as much mildness and favor as justice would permit.

But while this anxiety of the lord proprietor for his own temporal or economic welfare was leading him into the forward movement of religious toleration, his conscious endeavor to provide for the spiritual welfare of the colonists soon threatened not only to bring temporal destruction upon himself, but to establish in the colony a corrupt ecclesiastical tyranny against which his own countrymen had fought for nearly four hundred years, and which they had at last overthrown. Father Henry More, the English Provincial for the Society of Jesus, was the lord proprietor's chief spiritual adviser. He is said to have agreed to give his support in adopting and applying the principle of toleration, and at the same time to have offered the assistance of his society in the colonizing enterprise. Accordingly, three Jesuit priests — Andrew White, Thomas Copley, and John Altham — were sent over as missionaries with the first colonists. They had been in the province but three or four years when the lord proprietor was startled by being informed that they claimed the right to accept, for their society, gifts of land from the Indians; that they claimed that in a new and unsettled country the canon law prevailed *proprio vigore* without license, assent, or adoption by prince or people: and, hence, that by such divine law the clergy of Maryland were entitled — as an immediate gift from Christ to the church — to all the exemptions from lay jurisdiction that had ever been enjoyed anywhere by the church of Rome.

Such exemptions had been introduced into England under the Norman kings, becoming most extensive during the reign of Stephen; and although they were temporarily narrowed by the Constitutions of Clarendon adopted in the

year 1164, yet England was not rid of them until after Henry VIII became head of the church. Could they have enjoyed those exemptions, the Maryland priests would have received large tracts of land from their Indian converts; and by having cognizance of testamentary cases, they might have indulged in the old abuse of paying legacies to the church or other pious causes before paying creditors, heirs, or legatees. In this way, therefore, the lord proprietor would have been deprived of much of his territory, and would have lost so much control of the government that toleration and the purpose for which he had promised it would have been defeated.

Upon hearing of the claims of the priests, the lord proprietor bestirred himself, made John Lewger his secretary, and sent him over to assist the governor. Lewger, once a Protestant but now a Catholic, had been educated at Oxford University, and was well acquainted with the history of the struggle in England. As soon as he arrived in the province, he entered upon his duties with faithfulness and diligence, and gradually gained the support of the Assembly against the priests. But thereupon the priests absented themselves from the Assembly under pretence of sickness, began to lay their complaints as well as their claims before the lord proprietor, and continued to receive land from the Indians.

Father Copley, in a letter to the lord proprietor, complained that Lewger held that the church was entitled to no privileges by divine law, nor to any privileges whatever except such as the commonwealth granted it. After denying this, the reverend father expressed the hope that a converted Indian king might be permitted to give him, who had helped to save his soul, enough land to build a church or a house on, and asked the lord proprietor to consider whether he who restricted ecclesiastical liberty

in this point would not incur danger of excommunication. Finally, as the least consideration in favor of himself and his fellow-priests, he asked that the church and the priests' houses might have the privileges of sanctuary; that, though many ecclesiastical privileges were relinquished for the satisfaction of the home government, the priests might decide when and where such relinquishment was necessary; that priests, their domestic servants, and at least one-half their planting servants should be exempt from public taxation; and that they might live and trade with the Indians without license from the governor.[1] Nor did the priests fail to gather around them a party of laymen in support of their cause; and what was especially alarming, the great planter and military leader, Thomas Cornwallis, was in that party. He, too, wrote to the lord proprietor, saying that the security of his conscience was the first condition that he had expected from the government, and he declared that he would sacrifice himself and all that he possessed in defence of God's honor and the church's right rather than willingly consent to anything that might not stand with the good conscience of a real Catholic.[2] Moreover, the lord proprietor was informed that the priests had declared to Secretary Lewger that they were ready to shed their blood in the defence of the faith and the liberty of the church.

After the lord proprietor had received this intelligence and had had an interview with Father White, who had gone to England, he was more aroused than ever, and wrote to the governor the following: "I am satisfied in my judgment that they do design my destruction, and I have good cause to suspect that if they cannot make or maintain a party by degrees amongst the English to

[1] Calvert Papers, No. 1, p. 162 *et seq.* [2] *Ibid.*, p. 172 *et seq.*

bring their ends about, they will endeavor to do it by the Indians withal under pretence of God's honor and the Christian faith, which shall be the mask and vizard to hide their other designs withal. If all things that clergymen should do upon these pretences should be accounted just and to proceed from God, laymen were the basest and most wretched slaves upon earth. And if the greatest saint upon earth should intrude himself into my house against my will, and in despite of me with intention to save the souls of my family, but withal give me just cause to suspect that he likewise designed my temporal destruction, or that being already in my house doth actually practise it, although withal he perhaps do many spiritual goods, yet certainly I may and ought to preserve myself by the expulsion of such an enemy and by providing others to perform the spiritual good he did. . . . For the law of nature teacheth this, that it is lawful for every man in his own defence, *vim vi repellere*." [1]

But by the time the lord proprietor was writing this, his victory over the priests was nearly won. The governor and the secretary had procured the passage of acts of assembly whereby the jurisdiction over marriage and the cognizance of testamentary cases were assigned to civil officers. The lord proprietor had appealed to the higher authorities, and Father More had agreed to renounce all claim on the part of the Society of Jesus to any exemptions from the operation of the law of the land, had executed a release in full of all lands acquired by the priests from the Indians, had recognized that there could be no valid grant of land in the province without the lord proprietor's sanction, and had agreed that thereafter no Jesuit priest should be sent to Maryland without the lord proprietor's

[1] Calvert Papers, No. 1, p. 217 *et seq.*

license. Acting upon this agreement, the lord proprietor recalled the troublesome priests, sent out others to take their places, and, in the year 1641, issued new conditions of plantation which, in effect, put into force in Maryland the prohibitions of all the Statutes of Mortmain that had up to that time been enacted in England.[1]

Strictly between Catholics and Protestants there seems to have been little disturbance for ten years after the landing of the first colonists. However, in the year 1638, one Lewis, a Catholic, rebuked two servants for reading a Protestant book and spoke offensively of Protestant ministers; and for this offence he was fined by the governor and put under bonds to behave better in the future.[2] Again, in the year 1642, one Gerrard, also a Catholic, took from the chapel at St. Mary's the key as well as some books, on the ground that he had some title to the chapel and its contents. Thereupon, the Protestants, who it seems had enjoyed the use of the chapel, presented the Assembly with a complaint against him and prayed for redress, and that body found him guilty of a misdemeanor, ordered him to return the key and the books, to relinquish all title to them and the chapel, and to pay a fine of five hundred pounds of tobacco toward the maintenance of the first minister that should arrive.[3]

More serious trouble between Catholics and Protestants was near. The government continued to be administered by Catholics, and the promised toleration act was not passed. The consequence was that, soon after the civil war broke out in the mother country, a Protestant opposi-

[1] Johnson, "The Foundation of Maryland and the Origin of the Act concerning Religion."

[2] Bozman, Vol. II. pp. 81, 85.

[3] Proceedings and Acts of the General Assembly, 1637–38 to 1664, p. 119.

tion arose in Maryland; and in that opposition Claiborne and Ingle found the principal support of their rebellion. While enjoying their temporary triumph, the rebellious Protestants presented Parliament with a petition in which they complained that the proprietary government, besides having been generally tyrannical, had by seduction and force turned many from the Protestant to the Catholic faith. The committee of lords and commons for foreign plantations, which considered the petition, decided that the lord proprietor had forfeited his rights, recommended that his charter should be declared null and void, and further recommended that the government of the province should be intrusted to Protestants.[1] An ordinance for those purposes was accordingly drawn up by the committee, was presented to Parliament, and was passed by the House of Lords. But here the tide turned. The rebellion in the province was suppressed. The lord proprietor obtained a hearing from Parliament, and prevailed upon that body to stop proceedings against him.

However, those proceedings of the Maryland Protestants, together with the progress of affairs in the mother country, were not without lasting effect. As a guard against the recurrence of such a dangerous juncture, the lord proprietor made a Protestant, William Stone, his governor, and divided the places in the council equally between Catholics and Protestants. At the same time, in the interest of toleration, he caused the following clause to be inserted in the governor's oath: "I will not by myself nor any person directly or indirectly trouble, molest, or discountenance any person whatsoever in the said Province professing to believe in Jesus Christ, and in particular any Roman Catholic for or in respect of his or her religion or in his or her free exercise thereof

[1] Proceedings of the Council, 1636 to 1667, pp. 164, 165.

within the said Province so as they be not unfaithful to his said Lordship nor molest nor conspire against the civil government established here, nor will I make any difference of persons in conferring offices, rewards, or favors proceeding from the authority which his said Lordship hath conferred upon me as his Lieutenant here for in respect of their said religion respectively, but merely as I shall find them faithful and well deserving of his said Lordship . . . and if any other officer or person whatsoever shall, during the time of my being his said Lordship's Lieutenant here without my consent or privity, molest or disturb any person within this province professing to believe in Jesus Christ merely for or in respect of his or her religion or the free exercise thereof, upon notice or complaint thereof made unto me I will apply my power and authority to relieve and protect any person so molested or troubled whereby he may have right done him for any damage which he shall suffer in that kind and to the utmost of my power will cause all and every such person or persons in that manner to be punished."[1] The first provision of this clause was also inserted in the oath prescribed for each member of the council.

Finally, in the year 1649, before the close of the first year of the first Protestant administration, the toleration act was passed. It prescribed the penalty of death and confiscation of property for blasphemy, for denying Christ to be the Son of God, or for unbelief in the Trinity. But it directed that no one professing to believe in Jesus Christ should be in any way "troubled, molested, or discountenanced for or in respect of his or her religion or in the free exercise thereof," or be in "any way compelled to the belief or exercise of any other religion against his or her consent." He who in person or estate wilfully

[1] Proceedings of the Council, 1636 to 1667, p. 209 *et seq.*

wronged, disturbed, or molested any one professing to believe in Jesus Christ for or in respect of his or her religion or the free exercise thereof, was to be compelled to pay treble damages to the party so wronged or molested and also to forfeit twenty shillings. Furthermore, the act forbade the calling of one another by reviling names, on account of religious differences, such as: Heretic, Papist, Idolator, Jesuit, Puritan, Independent, Separatist, Lutheran, Calvinist, Brownist, Anabaptist, Antinomian, and the like.

Thus far, then, it appears that the lord proprietor, soon after he began to make preparations for sending out his first colonists, resolved to promote religious toleration as a means of inducing a greater number of people to become his tenants. Having adopted this policy, he intrusted the government to officers who were of the Catholic faith; but at the same time he instructed those officers not to offend the Protestants. All went well until the news of civil war in the mother country reached the province; for, until then, there are recorded only two instances of trouble between Catholics and Protestants, and in dealing with those troubles the Catholic officers and the General Assembly showed a willingness to protect the Protestants and to punish the offending Catholics. But as the civil war progressed, the lord proprietor saw that if he was to prevent the loss of his province, he must fill the controlling number of offices with Protestants. He did so, and at the same time took care to uphold toleration in general, and the Catholics in particular, by the insertion of a strongly worded toleration clause in the oath of the governor as well as in that of each member of the council. The bulwark in defence of toleration to all professing Trinitarian Christianity was made about as complete as a legislative body could make it when the General Assembly passed the famous toleration act of 1649.

But while the lord proprietor was striving to guard his own interests by the promotion of religious harmony and harmony between the government of his province and that of the mother country, the Virginia government defied the home government and became intolerant toward those Virginians who would not conform to the Church of England. Many of the non-conformists found a new home in Maryland. The home government sent out commissioners to reduce Virginia to submission. The ungrateful Puritans, once molested in Virginia, but now — in their new home — enjoying the protection of a tolerant government, made the despatch of this commission an occasion to unite with Claiborne, the archenemy of Maryland, for the overthrow of the proprietary government. For about four years the province was governed by Puritan commissioners, and the first Assembly called by them passed an act denying protection to Roman Catholics and to members of the Church of England. Oliver Cromwell, however, was more tolerant than the Maryland Puritans. The lord proprietor found favor in his eyes, and thereby the proprietary government was fully restored on condition that the toleration act should not be repealed.

Furthermore, as a favor to Quakers, it was agreed in the first restoration Assembly that any inhabitant of the province might, instead of taking the oath of fidelity, subscribe the following engagement, "I, A. B., do promise and engage to submit to the authority of the Right Honorable Cecilius Lord Baltimore and his heirs within this province of Maryland according to his patent of the said Province, and to his present Lieutenant and other officers here, by his Lordship appointed to whom I will be aiding and assisting and will not obey or assist any here in opposition to them."[1]

[1] Proceedings and Acts of the General Assembly, 1637–38 to 1664, p. 370.

Unhappily, — if the charges against them were not false, — the more ardent of that sect did not regard this as a sufficient concession to them. Under their leaders, Thurston and Cole, some of them not only refused to subscribe the engagement, but they persuaded others, who had subscribed it, to renounce and disown it. They refused to bear arms when there was danger from the Indians, and they did all they could to dissuade others from doing so. They would not take the juror's oath or give testimony in court. In all things they insisted that "they were to be governed by God's law and the light within them, and not by man's law." It was, therefore, not to be expected that a government, having any regard for the law of self-preservation, could tolerate such principles; and, consequently, the governor and council, in July, 1659, passed an order directing that such insubordinate Quakers as returned after having been once banished should be whipped from constable to constable until they were again out of the province.[1] Happily, it was not necessary for the order to be continued after October, 1660; and it is not certain that there was a single instance of its execution.

The endeavor to maintain toleration while the mind of the people was yet so narrow and exclusive met with many obstacles. The number of Protestants increased faster than the number of Catholics. The Puritans who had once helped to overthrow the government never became friendly to it. Although several of the offices were filled with Protestants, the lord proprietor, the governor, and a controlling number of the council were Catholics. The popular branch of the legislature was Protestant, while all the other branches were Catholic; and hence a growing political opposition was combined with religious differences to

[1] Proceedings of the Council, 1636 to 1667, p. 362.

increase the antipathy between Catholics and Protestants. There were those in the lower house who desired a law for the maintenance of ministers, but the very mention of it aroused bitter feeling. The population was too sparse and divided among too many religious sects for an adequate maintenance of ministers by voluntary contributions. Religious discord was the great obstacle to the passing of a bill for founding a school or college. Religious worship was consequently neglected, and children grew up in ignorance and superstition. Catholicism flourished at the expense of Protestantism. The drudgery of tobacco culture was depressing rather than inspiring; and the people became so morally depraved that an outcry against the conditions reached the mother country. In the year 1676 the Rev. John Yeo, in a letter to the Archbishop of Canterbury, wrote: "There are in this province ten or twelve counties and in them at least twenty thousand souls and but three Protestant ministers of us that are conformable to the doctrine and discipline of the Church of England. . . . No care is taken or provision made for building up Christians in the Protestant religion for want of which not only many daily fall away to Popery, Quakerism, or fanaticism, but also the Lord's day is profaned, religion despised, and all notorious vices committed so that it is become a Sodom of uncleanness and a pest house of iniquity."[1]

Mr. Yeo desired that a tax should be levied for the maintenance of ministers of the Church of England, and he undoubtedly exaggerated the evils of the situation. But however that may be, he was instrumental in causing the home government to look with ill favor on the proprietary government and to interfere with the same. The Archbishop of Canterbury referred the letter to the

[1] Proceedings of the Council, 1667 to 1687–88, pp. 130, 131.

Bishop of London, who, in turn, referred it to the lord proprietor. In his reply the lord proprietor stated that, as at least three-fourths of the inhabitants were Presbyterians, Independents, Anabaptists, and Quakers, it would be a most difficult task to prevail upon the lower house to assent to a law for compelling so large a proportion of the people to maintain ministers of another persuasion; and he further stated that he thought it best for the members of each sect to support their ministers by voluntary contributions.[1] This reply being unsatisfactory, the matter was laid before the king's privy council; and that body requested the lord proprietor to do something for the maintenance of ministers of the Church of England and to put all offices and firearms in the hands of Protestants. But the lord proprietor did little more than to show that about one-half of the offices had been held by Protestants and to contend that, by the charter, he alone, and not the king or the Bishop of London, had the right to choose ministers. He could not, however, stem the tide of Protestant opposition. The more unscrupulous spread a rumor that the Catholics had formed a plot with the Indians to slaughter all Protestants. A Protestant revolution in the mother country placed a Protestant king and queen on the throne, but the Catholic government of Maryland failed to proclaim them. The result was that the lord proprietor's Catholic government was overthrown, and in its place the new king and queen set up a Protestant government of their own.[2]

The first Assembly convened by the royal government passed the act, in the year 1692, for the establishment, in Maryland, of the Church of England. By authority and

[1] Proceedings of the Council, 1667 to 1687–88, pp. 132, 133, 252, 253, 261, 262, 263.

[2] *Supra*, pp. 35–42.

direction of this act, each county was divided into parishes, and vestrymen were chosen. The vestry of each parish was made a corporate body of trustees and directed to build a church. And a tax of forty pounds of tobacco per poll was to be levied each year for the maintenance of the minister, or, when there was no minister, for such pious purposes as the vestry should direct.[1]

In the year 1694 a supplementary act was passed. One year later, both the principal and the supplementary act were superseded by a third. It seems that the crown disallowed this one; and so, in the year 1696, a fourth act was passed. But in it was the following objectionable clause, "That the Church of England, within the Province, shall enjoy all and singular her Rights, Privileges, and Freedoms, as it is now, or shall be at any time hereafter, established by Law in the Kingdom of England: And that his Majesty's Subjects of this Province shall enjoy all their Rights and Liberties, according to the Laws and Statutes of the Kingdom of England, in all Matters and Causes where the Laws of the Province are silent."[2] The Quakers presented a petition against the act. The Catholics fought it, though in secret. And so, in November, 1699, the crown disallowed it, alleging as the reason that the clause quoted above was of another nature than that set forth in the title. But the clergy of the once established church, realizing their own weakness and the strength of their enemies, had implored the Bishop of London to send them a superintendent, commissary, or suffragan, invested with sufficient authority to redress what was amiss and supply what was wanting. The Assembly had done its part toward providing for the maintenance of such an officer by praying that to his office should be annexed that of judge of probate—worth

[1] *Supra*, pp. 410–412.

[2] L. H. J., July 3–10, 1696.

about £300 sterling per annum. The Bishop had responded by appointing Dr. Thomas Bray to be his commissary in Maryland. For a few years Dr. Bray remained in England, laboring diligently in the endeavor to provide the province with parochial libraries and more ministers; but as soon as the crown had disallowed the act of 1696, he hastened to Maryland to direct the passage of another. He received a hearty welcome, and seems to have exerted much influence with the Assembly, which, but for his encouragement, might not have passed another church act. As it was, such an act was passed in the year 1700; but, strange to say, its authors were guilty of an oversight, or else they were so regardless of the power of the enemy that they struck a blow at all religious dissent by inserting a clause requiring the use of the book of common prayer "in every church or house of public worship." Dr. Bray was sent to England to repel the assaults of the enemy and to secure if possible the crown's assent. His presence was needed, for both Quakers and Catholics were again busy. The one objectionable clause was the vulnerable point. When it was seen that the act would not receive the crown's assent as it then stood, Dr. Bray asked permission of the board of trade to have a new bill — to be drawn according to the instructions of the said board — sent to Maryland for passage by the Assembly without amendment. This was granted. Dr. Bray's bill became a law in the year 1701–02, and with but few later amendments it remained in force until the Revolution of 1776.

As an addition to the law of 1692, the law of 1702 required the annual election, by the freeholders, of two church wardens for each parish, and the appointment, by the vestry, of a parish register. It required the vestry to meet once a month. It changed the tenure of office of

vestrymen. It authorized the vestry and church wardens, when additional money was needed for parochial purposes, to ask the county court to levy a parochial tax not exceeding ten pounds of tobacco per poll in any one year. It regulated marriages. It directed that the minister should be appointed, presented, or inducted by the governor. It forbade any minister to hold more than one parish at any one time, unless, by an agreement of the vestries of two adjacent parishes, he should be permitted to hold both. Finally, it not only prescribed toleration to Quakers and all other Protestant dissenters, but it removed the political disabilities of the Quakers.

Not only was this institution established in the face of an alert opposition, but until the end of the colonial era it was the object of repeated attacks. The first and principal trouble lay in the want of a responsible authority to discipline the clergy. The appointment of Dr. Bray was a step well taken. During his short stay in the province he summoned the clergy to a general visitation at Annapolis, and there gave strong proof of his zeal and power to rid the province of all clergymen of profligate lives. But not long after his return to England he was called to other labors, and never came back to resume his work in Maryland. He, however, felt that the church was greatly in need of a bishop to continue the work which he, as commissary, had begun, and for the necessary maintenance proposed that the bishop be given the office of judge of probate and also a well-stocked plantation. He even bargained with the lord proprietor for five hundred acres of land, and collected considerable money toward paying for the same. He tried to get a bill passed by Parliament for establishing a suffragan bishop. Failing in this, he, after consultation with the Bishop of London, named a man to succeed him as commissary ; and it was further agreed

between the Bishop of London and himself that the new commissary should have the right to induct ministers, while the governor should retain the right of presenting them.[1]

But at this stage in the proceedings, Colonel John Seymour was appointed governor. Before he embarked the plan for establishing the office of commissary was submitted to him; for its success depended upon his willingness to forego the right of induction, and upon his support of the proposal to make the commissary the judge of probate. Unfortunately for the future of the church, Seymour was one of those incompetent war governors, so common in the royal provinces; and upon being told of the plan, he seemed to fear that Dr. Bray had been trying to take advantage of him, flew into a passion, and was more than once afterward heard to declare that he would have no commissary in the province.[2] Had he acted less selfishly and more discreetly in this matter, perhaps he would not have felt called upon, the year before he died, to address the following words to the Assembly, "And now, Gentlemen, give me leave to tell you it's high time for you that represent the whole Province to look into the many Immoralities of this poor deluded Country, where Drunkenness, Adultery, Sabbath-breaking, and Perjury are a Jest, horrid Murders stifled, and the Malefactors glory in it, Treason made a Trifle, and the Abettors caressed, Magistrates grow careless, and the Offenders impudent."[3]

At the time these words were spoken, several of the

[1] Perry, Papers relating to the History of the Church in Maryland, p. 57 *et seq.*

[2] Hawks, "Contributions to the Ecclesiastical History of the United States," Vol. II, p. 124 *et seq.*

[3] L. H. J., November 29, 1708.

clergy of the established church — paid, by a tax on the people, to preach righteousness — were leading such dissolute lives that the Assembly made its first attempt, in its own way, to restrain their vices. A bill was introduced which provided for the establishment of a spiritual court, to be composed of the governor and three laymen. The court was to have cognizance of all cases of immorality on the part of a clergyman and non-residence in his parish for thirty days at any one time; and it was to have power to deprive the offender of his living and suspend him from the ministry. The bill passed both houses; but the governor withheld his assent on the ground that he had no instruction from the home government concerning the matter.[1] The movement to establish the court, even though it failed at this time, was not without effect. Some of the better clergymen wrote to the Bishop of London about it, described it as "a presbyterian form of ministers and lay elders," and represented that the establishment of it would raise an effectual bar to the introduction of Episcopacy, which they still desired and hoped for.

Governor Seymour died in the year 1709, and for the next five years the province was without a governor. Then, in the year 1714, Governor Hart arrived. It was hoped by some that he had come with power to remove such of the clergy as were a scandal to religion; but in this they were disappointed. However, the new governor manifested an interest in the church by causing the clergy to meet at Annapolis, in the first year of his administration, that they might become better acquainted with one another, and that he might ascertain who among them were worthy, and who unworthy.[2] To his discomfiture, soon after he began to show this attention to ecclesiastical affairs, sev-

[1] Hawks, pp. 128–131.

[2] Perry, pp. 77–82.

eral vestries applied to him to hear charges against their ministers. Those made against Rev. Tibbs of St. Paul's Parish, in Baltimore County, were of so serious a nature that the governor consulted with some of the clergy as to what should be done. They advised that Tibbs be asked to reform his manner of living and reconcile himself to his parishioners, that if he did not do so, he and his accusers should be given a hearing, and that all the proceedings in his case should be transmitted to the Bishop of London for determination. But the vestry thought this would take too long, and, as the governor, on the further advice of some of the clergy, decided that he had not the ecclesiastical authority which would warrant his summoning the offender before him and the council for a hearing, nothing of consequence was done in this or any other case.

Yet when the governor saw how powerless he was to serve the church directly, he wrote to the Bishop of London that many of the clergy were leading notoriously scandalous lives, and that many of the laity of the established church were, as a consequence, becoming Catholic or Protestant dissenters. He said he wished Maryland had a suffragan bishop, but recommended, as second choice, the appointment of two commissaries, and named Jacob Henderson as a fit person to fill that office on the western shore and Christopher Wilkinson to fill it on the eastern shore.

The bishop responded by making the appointments just as the governor had recommended. But, again, the want of both discretion and sincerity on the part of the governor, the great difference in temperament between the two commissaries, as well as the mistakes of both, and the abhorrence of the Maryland gentry for episcopal authority, quickly checked the power and influence of these two representatives of the bishop. Not long after receiving

his commission, each commissary held a visitation of the clergy within his jurisdiction. Mr. Wilkinson proceeded with caution and moderation, for he felt that his superior's authority in Maryland was not yet well established. He was of the opinion that a recognition of the commissarial authority by an act of assembly was necessary. He was anxious about the pay which he was to receive for discharging the duties of his office.[1] And, therefore, he limited the work of his visitation to moral suasion and the making of inquiries. Mr. Henderson, on the other hand, was possessed of too much zeal to entertain doubt as to his authority; and moral suasion was, for him, too mild a remedy to be applied to men in holy orders who were drunken and licentious. He proceeded to make his visitation an ecclesiastical court, and to sit in judgment over the culprits.[2] He requested each clergyman to produce his letters of orders and his license from the Bishop of London. The notorious Tibbs came to the visitation, but did not produce the said letters and license. He was excused until an adjourned meeting, and was also advised of the complaint against him. But he did not appear at the adjourned meeting; and before anything had been done with him, Henderson had provoked a general ill feeling toward himself by retaining in his possession the letters of orders and license belonging to a Rev. Mr. Hall. Regarding this as an act of usurpation, Hall demanded the return of his property. This being refused, he obtained from the governor a warrant for its delivery.

The frailties of human nature were then given free play. Hart and Henderson, who had up to this time been warm friends, became bitter enemies. The clergy in general and the other commissary in particular were incensed at Mr. Henderson's high-handed measure. Many influential

[1] Perry, pp. 86, 87, 106–108. [2] *Ibid.*, p. 92 *et seq*

people, who from the beginning had been strongly opposed to the establishment of any episcopal authority in the province, could now more easily convince others that it was dangerous to liberty. Yet at the very time when the opposition to the power of the commissaries was thus stirred up, a bill for the recognition and strengthening of their authority was introduced into the Assembly. The Bishop of London had written that he was not in favor of thus mixing his authority with that of the Assembly. But since the appointment of the commissaries the members of the Assembly had shown their opposition by reducing marriage fees and by talk about further decreasing the income to some of the clergy through a division of parishes, particularly that of the commissary on the eastern shore. Then, too, Hart was not a strong man. He was probably only too glad to please Wilkinson, if by so doing he thought he could annoy Henderson. At the same time he was too fond of popularity to sacrifice it, through too strong support of an unpopular measure, even for the good of the church. Apparently no other preparation for the success of the bill was made than to request Mr. Henderson not only to stop proceedings against the offending clergymen, but to reconcile himself to all his brethren. Then, when the Assembly was in session, Governor Hart, instead of making himself responsible for the measure and pleading boldly and vigorously for its passage, called a meeting of the clergy, asked them to state what they wanted of the Assembly, and so used men in holy orders — obnoxious because of the immorality of several of their number — for a shield to protect himself from such attacks as the bill might incite the lower house to make.[1] The clergy asked that the Assembly should recognize the commissarial authority; that something be allowed for the maintenance

[1] Perry, p. 102 *et seq.*

of a register; that the sheriff should be required to serve citations; and that church wardens should be allowed their expenses for attending visitations.[1] A bill for granting all these requests passed the upper house. But in the lower house about one-third of the members were dissenters, and of the other two-thirds many were of the gentry and much opposed to all forms of episcopal authority. Then, too, the more unscrupulous among the clergy themselves worked in secret for the defeat of the bill. The opposition was successful. The bill was lost. Hart and Wilkinson ascribed the loss to Henderson, while Henderson ascribed the loss to Hart and Wilkinson.[2] During the remainder of Hart's administration Henderson could do nothing as commissary; and the whole proceeding with respect to the lost bill only served to beget a belief among the people that episcopal authority in Maryland rested on no well-founded claim.

In the year 1720 Governor Hart was succeeded by Governor Charles Calvert, and then each of the commissaries held a few helpful visitations; but soon the death of the Bishop of London made void their commissions. Mr. Henderson, in stating to the new Bishop of London the needs of the church, wrote, "What I would propose as the greatest service that can be done for religion and the ease of the Clergy is that a Bishop should be sent for this Province to reside in it, and a charge it will be sufficient for any one man."[3] Mr. Wilkinson also urged that some person be sent over with episcopal or delegated authority.

But while these clergymen were asking for a bishop, the lower house, under the leadership of Thomas Bordley, was preparing to pass a bill for establishing a spiritual court to be composed of laymen. When this became

[1] Perry, p. 105. [2] *Ibid.*, pp. 106–112. [3] *Ibid.*, p. 138.

known, the clergy, in a body, protested, saying that such a jurisdiction would be inconsistent with the lord proprietor's charter, repugnant to the laws of Great Britain, destructive of the constitution of the Church of England, and that they could not submit to it as it would be altogether contrary to their ordination vow.[1] To this protest, the lower house replied, in part, as follows, "It hath appeared to us that some clergymen within this province have behaved themselves in a manner so inconsistent with their character that instead of being guides to the people and preventing their being misled by Popish Priests and other enemies of the Church of England, their misbehavior and ill example have been the most prevailing motives with several weak people to forsake the communion of the best church in the world and with others to look upon all religion as imposture and cheat, and that the irregularities complained of are presumed to be owing in great measure to the want of some judicature to correct the offenders."[2] But having made this reply, the lower house turned from the threat to pass the court bill to an attempt to starve the clergy through reducing by one-fourth their income of forty pounds of tobacco per poll and by the division of parishes.

As these attempts to lessen the income of the clergy were being made, the Bishop of London invited the Rev. Mr. Colebatch to come to England that he might there receive consecration and then return to Maryland as his Lordship's suffragan. It seems probable that the bishop expected to obtain the royal authority for such a consecration after the arrival of Mr. Colebatch. But when this plan for establishing episcopal authority became known, a writ of *ne exeat* was issued, and the departure from the province of the prospective suffragan was thus prohibited.[3] However, after the

[1] Perry, p. 247 *et seq.* [2] *Ibid.*, p. 248. [3] *Ibid.*, p. 269.

bill for reducing the forty per poll to thirty per poll had passed the Assembly, the clergy resolved to send Henderson to England to represent their grievances and to seek redress; and he not only obtained the redress, by causing the lord proprietor to disallow the grievous act, but returned in the year 1730 as commissary of the whole province.

Yet the very success of this mission to England made all the more intense the bitter feeling which for some time had existed between laity and clergy, especially of the gentry toward the commissary himself. "Some of the leaders in the warfare against the church," says Hawks, "had so spirited up the people to resentment that threats were openly made of mobbing the commissary; but Jacob Henderson was not a man to be frightened by threats or even by blows; for on one occasion, soon after his return, he was assailed at the house of a gentleman by one of that magnanimous class of heroes who are willing to purchase a reputation for courage, at a small risk, by bullying or assaulting a clergyman, whose hands they know are tied by his profession as a minister of the religion of peace. In this instance, however, the coward reckoned without his host. He struck Mr. Henderson; the blow was patiently borne without retaliation. Emboldened by a forbearance which he could not understand, and therefore mistook for timidity, he struck him a second time, whereupon he received such a handling as taught him thereafter not too hastily to take for granted a deficiency of either courage or strength in a clergyman." Other clergymen, at this time, received blows from one who was both a member of the lower house and a justice of the peace; and when the clergy, in a body, complained to the governor of this barbarous treatment of some of their number, he was so far from being disposed to punish the

offenders that he himself threatened to kick the commissary.[1]

The lower house, under the able leadership of Daniel Dulany, had long contended that the people of Maryland were entitled to all the laws and statutes of the mother country except such as were excluded either by express words in the said statutes or by the acts of the Assembly of Maryland. Reasoning along the same line, Commissary Henderson held that the laws and usages of the church in the mother country extended, in full force, to Maryland. But the lord proprietor's charter expressly granted to him the "Patronages and Advowsons of all churches." Then, too, the lower house, in making its contention for the English laws and statutes, was seeking only such security from oppression as English documents, like Magna Carta and the Bill of Rights, alone could give; but when Mr. Henderson made a like contention for the extension of the laws of the church, Daniel Dulany and Thomas Bordley told the people of the tyrannical deeds of William Laud, Bishop of London and Archbishop of Canterbury under King Charles I, which had driven some of their forefathers to seek freedom in the New World.[2]

Nevertheless, undaunted in the face of this open hostility, Mr. Henderson held visitations and deprived one of the drunken clergymen of his living. But, thereupon, some of the lawyers questioned his authority. The Bishop of London had obtained from King George I a commission which made himself diocesan of the colonies, and of this Commissary Henderson had an exemplified copy.[3] But King George II was now upon the throne, and the commissary had no copy of the new king's commission to the bishop. He applied for it; but before receiving

[1] Perry, pp. 283, 300; Hawks, pp. 206, 207. [2] Hawks, p. 211.
[3] Perry, pp. 300–308.

it, a dispute had arisen between the lord proprietor and the bishop. During his visit to his province, in the year 1732–33, the lord proprietor had been friendly to the clergy, and had done much to restore a better feeling between clergy and laity. But while in the province and after his return to England he contended that his charter gave him the sole right of appointing, presenting, and inducting ministers, and that the Bishop of London was, therefore, entitled to no jurisdiction therein.[1] The bishop did not see fit to press the matter. Commissary Henderson was left without settled authority. The clergyman whom he had deprived of a living was advised to sue him for damages or else sue the sheriff for the forty per poll in case it was refused. Under these circumstances Mr. Henderson thought it useless for him to proceed against the more notorious but more wealthy Tibbs; and by the year 1734, realizing that he had no real power, he ceased to act as commissary.[2] From that time until the overthrow of the proprietary government there was no episcopal authority in Maryland.

Thus did Charles, the fourth lord proprietor, shut out from his province the disciplinary church law of the mother country; and in the year 1748, when the lower house, by a vote of thirty to fifteen, passed another bill for disciplining the clergy, the same lord proprietor's appointees in the upper house rejected it. Frederick, the fifth lord proprietor, in the second year of his administration, reserved to himself, alone, the choice of ministers, not allowing even the governor to exercise that right. One year later he instructed the governor to forbid the clergy, for the future, to assemble themselves together. At the same time, attempts to divide parishes were resisted; hence, with the increase in population, many

[1] Perry, pp. 313, 331. [2] Hawks, p. 222.

of the ministers were well paid; and the degenerate Frederick found, in his charter right of patronages and advowsons of churches, an opportunity to give places of profit to his ignoble friends.[1]

But no matter how ignoble, profligate, or criminal a minister was, after he had once been inducted into a parish, there was no power to remove him or deprive him of his living. He was in for life or until he found something that suited him better. After being inducted, one minister, for example, spent the most of twenty years in jail; and, even while at large, he is said to have been so infamously profligate that it was a discredit to any person of character to admit him to the regard and notice of a common acquaintance.[2] Another minister — one of those who had been within the inner circle of Lord Baltimore's friends,— by his arrogance, impudence, and greed, provoked the implacable resentment of several of the leading men of the province, particularly some members of the powerful Dulany family, and then carried a pistol, even into his pulpit, that he might defy his enemies.[3]

This was more than the people would forever endure. In the year 1768 both houses of Assembly passed another bill for establishing a spiritual court to be composed of the governor, three clergymen, and three laymen. Governor Sharpe, apprehending that the lord proprietor might dislike the bill, and yet be under some difficulty in rejecting it,[4] obeyed his superior's instruction and withheld his assent. But, thereupon, the Assembly declared that they would push the measure every session until it became a law.[5] Eden became governor one year later. Before he left England, the lord proprietor had stated that he had

[1] Gilmore Papers. [2] C. R., April 29, 1768.
[3] Gilmore Papers; *Maryland Gazette*, 1768; Sharpe's Correspondence, Vol. III, p. 432 *et seq.* [4] *Supra*, p. 226. [5] Perry, pp. 337, 339.

no objection to the bill; and the Bishop of London, upon being consulted in the matter, informed the new governor that he had no commission of superintendency over the clergy of America. One way to a government of the clergy was, therefore, at last clear.

In vain some of the clergy at this time addressed the governor and drew up addresses to the lord proprietor, the Bishop of London, the Archbishop of Canterbury, and the king in the hope that their request for a bishop might be granted. Governor Eden told those clergymen that the livings of Maryland were *donatives* and that consequently there was not only no need of a bishop, but that a bishop could have no authority.[1] His reasoning was more than questionable, but it so disheartened the hopeful that they did not send their addresses to England.[2]

On the other hand, the assembly bill for disciplining the clergy became a law in the year 1771. It required every minister to take the several oaths to the government within four months after his induction or appointment. It directed that any minister who neglected to do this, or who made any simoniacal contract, should be disabled from holding his place, benefice, or church living. It directed that any minister who absented himself from his parish for thirty days together, or for sixty days altogether during any one year, should forfeit £10 sterling. Finally, whenever the majority of the vestry and church wardens of any parish complained to the governor that their minister neglected to officiate, or that he was leading a notoriously or scandalously immoral life, the governor, with the advice of the council, was to appoint a commission to be composed of the governor himself,— if he was of the Church of England, and, if not, then the first member of council who was, — three ministers in

[1] C. R., September 15, 1770.

[2] Hawks, p. 256 *et seq.*

actual possession of a Maryland benefice, and three laymen of the Church of England ; and this commission was authorized to hear the case, and, upon finding the minister guilty, to admonish, suspend, or totally deprive him of his living.

Not only was the church left, for so many years, weak and offensive for want of government ; but the lack of foresight in its founders, in providing for the maintenance of the clergy, caused an increase of violence in the attacks that were made upon it in later years. When those founders made the forty per poll provision, they were looking back to the Mosaic law and seeking an approximate equivalent for the tenth. Their prophetic vision, however, failed them. They did not see that in the future many of the parishioners would raise no tobacco, that for the good of the whole country such parishioners should be permitted to pay in money, and, above all, that without legislative regulation the tobacco trade would be ruined and tobacco be of no use to the man in holy orders except to smoke or chew. Furthermore, the founders failed to make provision for changing the size of the several parishes so as to insure, with the increase in population, the payment of equal regard to the proper maintenance of the minister and to the accommodation of the parishioners.

When first laid out, many of the parishes were from thirty to forty and some of them even fifty miles long.[1] They were sparsely populated. Much poor tobacco was raised ; and it seems to have been quite usual for the planter to save the poorest for the minister. In the year 1696 the clergy complained that their tobacco sold for but from one-fourth to one-half as much as other tobacco.[2] No attempt was made to interfere with the law for levying the forty per poll until about the year 1728 ; and even at

[1] Perry, pp. 190–230.

[2] Hawks, p. 80.

that time the income to most of the ministers was pitifully small. Yet, for several years, for want of a law to regulate the tobacco industry, it threatened to become still smaller. The fees of officers had been reduced about one-fourth in the year 1719; and in the year 1725 the lower house had fought hard to reduce them one-half. The immorality of a few of the clergy caused the whole body to be despised; and when the lower house had proposed to establish a lay jurisdiction over them for their better behavior, they remonstrated. The people were at last crying aloud for a law to improve the tobacco trade. Therefore, when the Assembly, in the year 1728, passed a bill for limiting the number of tobacco plants, there was some appearance of justice, in spite of the law of 1702, in inserting a clause for making the forty per poll payable at one-fourth reduction, or in money at the rate of ten shillings per hundred weight of tobacco. But suspicion as to the real motive was strengthened when the same Assembly passed other bills for dividing several of the parishes; and it was on this occasion that the Rev. Mr. Henderson was sent to England. He procured the lord proprietor's disallowance of all these bills, and also caused the proprietor to order the governor not to pass any bill, for the future, which would be an infringement of the church act of 1702, or which would be a violation of English law and custom by dividing a parish during the lifetime of an incumbent without the incumbent's consent.[1]

Nevertheless, the year in which this order was received, both houses passed another bill for limiting the number of tobacco plants. It required the payment of only thirty pounds of tobacco per poll, provided that in place of the other ten pounds grain was paid at the rate of one bushel of wheat for forty-two pounds of tobacco, one bushel of

[1] Perry, pp. 258, 262, 264, 267, 269, 270, 280, 282.

corn or oats for twenty pounds of tobacco, or one bushel of barley for twenty-four pounds of tobacco.[1] This bill was signed by the governor and received the lord proprietor's assent, much to the discomfiture of the clergy; but as it did not successfully regulate the tobacco industry, it remained a law for only two years.

After its expiration, Maryland planters were for several years subject to no law with respect to either the quantity or the quality of the tobacco which they put upon the market, while the Virginia planters became subject to a law which much improved the quality of the tobacco in that province. The result was that the Maryland tobacco trade reached the brink of ruin, and that the clergy became quite willing to have a law like that of Virginia, even though it gave them only thirty pounds of inspected tobacco per poll from the planters and 3*s.* 9*d.* per poll from those who made no tobacco. This law, the famous inspection law, was made in the year 1747. It was not long before it caused the price of tobacco to rise to such an extent that those who were permitted to pay in money — the wheat growers, iron workers, and others, who contributed far more to the welfare of humanity than did the tobacco planters — were taxed less in real value than were those who were obliged to pay in tobacco.

Yet, after this good law had been in force five years, one of the ungrateful clergymen, in a letter to the Bishop of London, acknowledged that the price of tobacco had advanced since its enactment, but, instead of being thankful for this, he characterized as "lazy" those who were permitted to pay in money; he grumbled and said that the law had already "picked his pocket" of £200, and he asked that something be done to have it annulled.[2]

The law was continued, however, until the year 1770.

[1] Perry, p. 284 *et seq.*

[2] *Ibid.*, pp. 326, 328.

By causing the price of tobacco to advance, it also caused the number of taxable persons in each of the several parishes to increase the more rapidly. Before it had been in operation thirty years the clergy of Maryland were better paid than those in any other colony in America. In the year 1767 there were only two parishes in which the clergyman's annual income from the poll tax was less than £100 sterling, and only eight in which it was less than £150 sterling; in sixteen it was more than £200 sterling, and in All Saints Parish in Frederick County it was already more than £450 sterling, and increasing at the rate of at least £50 a year.[1] So lucrative had many of the benefices become that it was not uncommon for a clergyman, after officiating only a few years, to resign in favor of another, upon an express understanding that when the latter was inducted, he should pay annually a part of his stipend to the former, who thereupon quietly sat down in idleness.[2]

Worst of all, the renegade Bennet Allen, the most brazen faced among them, after fighting hard that he might enjoy the possession of two benefices at the same time, finally got possession of the most lucrative one in the whole province. For a few years Thomas Bacon, a most highly esteemed, learned, and worthy gentleman, was the minister in All Saints Parish. As he, in the year 1768, was about to be laid in his grave, Allen wrote to Governor Sharpe the following: "I have this moment received intelligence that Mr. Bacon was dangerously ill, and the person who brought the news expects he is dead by this time. As my Lord Baltimore designed this Parish for me, and intended for that purpose negativing the Division had it been proposed by the Assembly, I humbly request from your Excellency my succeeding to that living upon confirmation of the news; and if it is

[1] Perry, p. 336; Eddis, p. 49.

[2] Hawks, p. 282.

done immediately, the Division (should it be agitated) would not affect my incumbency. Your Excellency's compliance with my request (which at all events will give me a certain provision) will greatly add to the many obligations I am already under to you, etc.

"BENNET ALLEN."[1]

So, such a man was inducted into a parish where he received from £550 to £1000 sterling per annum; and the most of this money was paid by the industrious Palatines, — a people who, driven from their European home because of their religious faith, had, in their new home, made the forest give way to the wheat field, had opened iron mines, and had founded a church of their own. The Dulanys — one of whom Allen later killed in a duel[2] — also had large vested interests in this parish. No wonder that fear caused the preacher to carry a pistol with him into his pulpit.

The inspection law was not revived in the year 1770, because when the lower house insisted upon a reduction of fees, the upper house would not permit it. When the law had expired, the governor issued his proclamation for continuing the old table of fees; and what a tumultuous uprising this occasioned, has been seen.[3] No wonder, then, that upon the expiration of this law, the people also rose up in war against the clergy; for by the law of 1702 they were again entitled to the forty pounds of tobacco per poll. The act for disciplining the clergy had not yet been passed. Only the month before the inspection law expired, some of the clergy had made the people angry by asking the governor to join with them in the request for a bishop. For the past three or four years many parishioners had been vehemently contending that, as the church was

[1] Gilmore Papers. [2] *Ibid.*; Dulany Papers. [3] *Supra*, pp. 192, 399.

supported at their expense, the vestry, as their representatives, was entitled to the right of appointing the minister; and in support of their contention they stated that in many of the treatises on the canon law and in Coke's Littleton it was asserted that the right of presentation was first gained by such as were founders, benefactors, or maintainers of the church.[1] Still the charter gave this right to the lord proprietor. In this state of affairs it was intolerable to think of increasing by one-third the incomes of worthless clergymen. Their incomes under the inspection act were thought to have been far too large to be squandered in idle living.

In the midst of the strife, some lawyers thought they discovered that the law of 1702 was null and void. They said: "The Province of Maryland was in the hands of the Crown in the reigns of King William and Queen Anne. A General Assembly in the time of William had been legally chosen by the King's writs of election and summons. King William died on the eighth of March 1701–02. Without any fresh writ of election and summons the Assembly afterward met, and on the sixteenth of March 1701–02 made and enacted the contested law, commonly called the forty per poll law."[2] Many people then refused to pay their minister anything. Lawsuits were the consequence; and usually the decision was in favor of the taxpayer.[3] But appeals were made; and the case was not yet fully decided when, in the year 1773, the Assembly succeeded in passing an act for paying the clergy either thirty pounds of inspected tobacco or four shillings per poll. This act, however, was to have no influence in determining the validity of the law of 1702.

[1] C. R., April 29, 1768.

[2] *Maryland Gazette*, September 10, 1772.

[3] *Ibid.*, March 4, 1773; Hawks, p. 279.

The time had at last come when the people and the Assembly were determined either to correct the abuses of the clergy or else overthrow the church as established. In the year 1768 the vestry of Coventry Parish shut their newly inducted minister out of the church, threatened to tear down the house in which any one should allow him to preach, and began suit to determine whether they or the lord proprietor had the right to appoint their minister. In the year 1771 the disciplinary act was passed. Should the right of the vestry to appoint the minister have been denied, or should the disciplinary act have proved to be ineffectual, there would have been all the stronger probability that the church was not long to remain established by law.

The lord proprietor resisted with all his might the extension of the laws of both church and state in the mother country to his province. He was unsuccessful in resisting the extension of those of the state, and this strengthened the political power of the people. He was more successful in resisting the extension of those of the church, because the people themselves were afraid of episcopal authority. But this very success made him responsible for the abuses of the clergy and thereby added strength to the growing opposition which the people gave him. Finally, the vices of the clergy not only left the church without a restraining influence over the legislative Assembly, but, by being conducive to the growth of scepticism and dissenting sects, they indirectly occasioned the development of a broader, more liberal, and more progressive spirit among the people.

CHAPTER VIII

Relations with the Home Government

Until the close of the last intercolonial war, in the year 1763, the lord proprietor was kept between two fires: that of the home government on the one side, and that of his tenants, the people, and their representatives on the other. But from then until the final overthrow of the proprietary government, the people of Maryland, in union with those of the other colonies, were engaged in the great struggle with the mother country.

The lord proprietor, no less than the most lowly of his tenants, was a subject of the king; and this fact weakened his power to inspire with awe or with the spirit of submission. It was necessary for him to permit those under his government to enjoy their rights as British subjects if he would prevent them from carrying their grievances against him to the crown. At the same time it was necessary that he should govern with a sufficiently strong hand to preserve order, prevent anarchy, or suppress rebellion, if he would not have the crown declare that he had forfeited his right to the government. If he would avoid the fatal rock, it was necessary that he should keep his government adjusted to the views of the party in power in the mother country; that he should make changes so as to meet every important constitutional change in the mother country; that he should at least be most cautious about opposing any policy of the home government, and, especially, that he

should show the highest regard to every instruction or request from that government.

The first lord proprietor was both politic and diplomatic. He had the support of the home authorities in his contest with the Jesuit priests. During the progress of the war between the king and Parliament he made changes in his government so as to make it agreeable to the victors, and at the same time preserve harmony between his Catholic and Protestant tenants. Again, when Claiborne and the Puritan commissioners had got possession of his government, he won the favor of Cromwell and thereby caused it to be restored.

But the second lord proprietor did not inherit his father's diplomatic tact; and then, too, in his administration, the home government, seeking to enrich England through her colonial trade, gave more and more attention to the government of the colonies. Upon complaint being made about the neglect of Protestantism, the home government instructed the lord proprietor to have Protestant ministers appointed; but he, relying solely on the words of the charter that were in his favor, acted as if England had no right to interfere. When the home government asked him what were the obstructions to the trade of his province, and what improvements he would suggest, he replied, saying, "The greatest obstruction of the trade of this Province is what the late Acts of Parliament made in England for Navigation have occasioned, the removing of which is not to be expected until it be for the interest of England to remove them."[1]

As England saw fit to treat her colonies as her possessions rather than as part of herself, the acts of trade were not repealed. On the contrary, they were extended and more and more rigidly enforced. Under those acts officers

[1] Proceedings of the Council, 1667 to 1687–88, p. 268 *et seq.*

were appointed by the crown to administer them and collect such duties as might be imposed. Some of his Majesty's collectors of customs were base and insolent men. Under these circumstances, the lord proprietor became too irritated to act discreetly. He quarrelled with Rousby, one of those collectors, and then sought his removal and the appointment of two of his own relatives — who were collecting the duties imposed by the Maryland Assembly — to collect for the king. In several letters to the authorities at home, he denounced Rousby in the strongest terms at his command. He called him an insolent, dissolute, and profane rogue, a knave, a devil, a traitor. He charged him with fraud and extortion. He declared that because of the trouble shipmasters had with him, Maryland was losing much of her trade.[1] Rousby, on his side, however, represented that the lord proprietor had greatly hindered him in the discharge of his duties;[2] and instead of all the shipmasters being incensed against Rousby, Richard Colvill, one of them, reported in London that the officers of Maryland had imposed an oath on the people whereby they were required to swear fidelity to the lord proprietor against all princes whatsoever, but particularly against the king of England.

After the case had been brought before the commissioners of the customs, the treasury board, and the privy council, instead of removing Rousby, a judgment to the amount of £2500 was passed against the lord proprietor, and besides demanding of him this amount, he was severely censured and commanded to take care in the future that all the laws of England relating to the colonial trade were duly observed, and that encouragement and assistance were given to the customs officers.[3] To make matters still

[1] Proceedings of the Council, 1667 to 1687–88, pp. 274–276, 279.

[2] *Ibid.*, pp. 288 *et seq.*, 292 *et seq.*

[3] Proceedings of the Council, 1667 to 1687–88, p. 333 *et seq.*

worse, only three years after the above judgment had been pronounced, Rousby was stabbed to the heart in a quarrel with George Talbot, a relative of the lord proprietor, and the chief of his council.

Only a short time after the murder had been committed, Nehemiah Blackiston, another collector of his Majesty's customs, wrote a long letter to the commissioners of customs, in which he first stated that Talbot's friends and adherents had procured his escape from prison in Virginia, and had got him safely into Maryland, where he was living in his own house with little fear of being brought to trial. Then he proceeded to tell how, in his own case, the members of the council were so far from assisting him in his Majesty's service that they had disowned his commission, torn and burned his certificates to shipmasters, appointed others to collect his Majesty's customs, and threatened him with banishment for refusing to submit to the will of their appointees. He declared he was confident that several thousand pounds sterling had been lost to his Majesty through the obstructions which the lord proprietor's officers had put in the way of collecting the customs.[1]

The obstinacy of the lord proprietor and his officers could be justified on no other ground than that his charter had been infringed. King James II therefore instituted a *quo warranto* proceeding to annul that document. This had not been accomplished when he was driven from the throne and succeeded by King William and Queen Mary. The lord proprietor was ordered to have the new Protestant king and queen proclaimed in his province. He despatched a messenger to carry the order to his Catholic council; but that messenger died on the way, and the order was not executed.[2] Thereupon, the Protestant

[1] Proceedings of the Council, 1667 to 1687–88, pp. 436–439.

[2] *Ibid.*, 1687–88 to 1693, pp. 113, 114.

people of his province rose up, took possession of the government, and asked the new monarchs to establish a royal government over them. This was done; and the people and their representatives received a large accession of rights and powers.

After twenty-three years of royal government, the lord proprietor was restored not to such an absolute government as had existed previous to the year 1689, but to the more popular system which had been instituted and developed by permission of the home government — in which Parliament, if not the House of Commons alone, by the English Revolution of 1688, had become the real sovereign. Subsequent to 1715 appointment of a governor by the proprietor had to be approved by the home government. Furthermore, the crown instructed that governor in long detail with respect to the execution of the acts of trade, and he was put under bonds and oath to observe the same.

The relations between the people and the lord proprietor, subsequent to his restoration, affect the relations with the home government mainly through their bearing on the attempts of the lower house to appoint an agent to represent the people's grievances to the crown. The first request for the appointment of an agent came from the home government not long after the royal government had been established; but the lower house was unwilling to bear the expense until there was some pressing need. In the year 1695, while England was asking assistance for the defence of New York, some members of the lower house were of the opinion that if an agent were appointed to make known the danger that was threatening Maryland, she would not be asked to give to New York.[1] Yet no agent was at that time appointed. But seven years later the home government not only asked further aid for New York, but also

[1] L. H. J., May 13, 15, 17, October 8, 10, 17, 18, 1695.

more urgently than ever repeated its request for the establishment of an agency. It complained that on many occasions business touching Maryland could not be done without some charge, and that for want of an agent great and increasing inconveniences were arising through delay of reports and the like.[1] It so happened that at this time Nathaniel Blackiston, who for two years had been popular as governor, was, on account of ill health, about to retire from that office and return to England. Before departing he offered to serve the province as its agent for one year without any charge, and for as long thereafter as the Assembly should see fit to employ him at £120 sterling per annum. As the lower house had just before reluctantly voted to give £300 more to New York, and at the same time expressed a desire that Maryland's own need of defence should be presented to the king, Blackiston's offer was readily accepted.[2]

But the members of the lower house were too much mistaken, too selfish, and too unjust to make it possible for an agent to give them satisfaction. There had been good reason why Maryland should contribute toward the defence of New York; for Indian affairs in that province were of prime importance, whereas in Maryland there was little danger from the Indians, provided they were discreetly managed in New York. The only other matters of much importance which the newly appointed agent was asked to attend to were those relating to differences between the proprietor and the people, and in these, also, the people were too much prejudiced against the proprietor to stop with asking simple justice.

The consequence was that Blackiston did not accomplish enough in behalf of the province to keep the lower house willing to continue his salary. After a few years the

[1] L. H. J., March 25, 1702. [2] *Ibid.*, March 24, 25, 1702.

province was again without an agent. The board of trade urged that the agency be made permanent. But nothing was done until the year 1713, when it appeared that there had been a failure to present the crown with an address from the Assembly concerning the claim of Lawrence to the license money from ordinaries; and as another request that the claim be paid came from the crown that year, the lower house was ready to employ Blackiston again in order that he might show why Lawrence was not entitled to the money in question.[1] This time he seems to have been paid his salary for eight years. But as he won no important case for the province during those years, the lower house, in the year 1721, asked that he be discharged on the ground that he had been of too little service for the expense, because the lord proprietor was more easy of access than the crown, and because no other proprietary province employed an agent.[2] It was of no use that the upper house zealously urged the continuance of his salary principally on the ground that the lord proprietor might need assistance in making representations to the court or to Parliament. The agency was discontinued.

Thus far the agency was distinctly an organ of the royal government. The board of trade had desired that it should be made permanent in order to facilitate business. But the lower house had been unwilling to incur the expense except when the people had a particular grievance against the crown; and the governor and the upper house, on behalf of the board of trade, accepted the best terms they could get from the lower house. The idea of representing grievances through an agent survived the restoration of the proprietary government; but from that time the grievances were not against the crown, but against the lord proprietor,

[1] *Supra*, p. 355; U. H. J., October 29, 1713.

[2] L. H. J., August 4 and 5, 1721.

and were to be represented to the crown in the nature of an appeal. Wherefore, as both the governor and the upper house were the representatives of the lord proprietor, who was himself in England to look after his own interests, the members of the lower house contended that they alone, as the only representatives of the people, should be permitted to appoint and instruct an agent to be maintained by a tax on their constituents. The lord proprietor and his representatives refused to allow the appointment of such an agent, and the effect of the refusal was not unlike that which comes from denying the right of free speech.

It was in the year 1725, while the upper house was presenting its petition to the lord proprietor against the act for the reduction of officers' fees and in the midst of the controversy over English statutes, that the lower house passed its first agency bill. The upper house rejected it as a most unreasonable measure. Nevertheless, until the year 1774, the lower house continued to pass it at every session in which there was much disagreement between the two houses, and on the most critical occasions this very question was presented to the crown either through an address from the lower house or through an agent supported for a time by subscription.

In the year 1739 the lower house was loud in its clamor that the twelvepence tobacco duty, and the fourteen-pence tonnage duty were being collected without law.[1] Among other grievances then existing were the establishment of fees by proclamation, the vacating of grants alleged to contain surplus land, and the demand of alienation fines on lands devised. The governor was asked to redress these grievances. But as his reply gave no satisfaction, the upper house was presented with a bill for imposing a

[1] *Supra*, pp. 91, 346.

duty on tobacco to pay an agent who was to be appointed and instructed by a committee — designated as trustees — named by the lower house.

Upon rejecting this bill, the members of the upper house showed the height of their resentment in a message containing the following: "Although a prettier scheme for power and profit in our little world of politics could hardly be thought of, yet far be it from us to imagine that any persons, either in or out of your house, had any share in this admirable project with a view of being Trustees. Should this ingenious contrivance take effect, the Trustees might play the game into each other's hands and represent each other in England. The authority which they would gain by their Minister's complaints in England against whatever person or thing they pleased, might very soon become terrible and dangerous to every person they should be pleased to think and stigmatize as delinquents and malignants in this Province. And when, after glutting their vanity with a dictatorial power and filling their pockets with money under pretence of necessary uses and purposes, they should perceive an approaching period to their greatness of authority and gain, they might, by their Minister's consent, employ their power and money intrusted with them to their own private advantage, and the very great prejudice of the Province." [1]

But some of the members of the lower house were made of the sterner stuff, and these reflections upon them only called out their power to speak to the point and to act with effect. They replied, saying: "The people of Maryland think the Proprietary takes money from them unlawfully. The Proprietary says he has a right to that money. This matter must be determined by his Majesty, who is indifferent to both. The Proprietary is at home

[1] U. H. J., June 5, 1739.

and has this same money to negotiate the affairs on his part. The people have no way of negotiating it on their part but by employing fit persons in London to act for them; those persons must be paid for their trouble; and this bill proposes to raise a fund for that purpose. The Upper House tells us you shall not have that bill unless you let the Governor and us, or rather the Proprietary with whom we contest, have as well the nomination of the persons to be made use of on this occasion as to determine what, if anything, shall be paid them for their services. . . . The possibility you mention of the Trustees betraying the trust reposed in them will have little weight with the world, since the like supposition may, with equal propriety, be applied to all trusts of that kind; unless you would have us believe your Honors to be the only infallible persons in the world, and so commit this guardianship you speak of to yourselves. But how convenient that might be for the people whoever reads your message may easily judge. We cannot help thinking that the denying this looks too much like an unwillingness to have the matter in dispute brought to light. However, we shall give you no further trouble in it than to tell you the people of Maryland have spirit enough, and we hope will find means without this bill, to do themselves justice."[1]

During the same session, the lower house chose a committee of nine to appoint and instruct an agent and to furnish him with all necessary information.[2] It petitioned the lord proprietor for the redress which the governor had declined to give. It also prepared an address to the king in which it complained of the grievances, oppressions, and extortions from which the people of Maryland were suffering under the proprietary government. "Our rights as British subjects," that body said in this address, "are in-

[1] L. H. J., June 6, 1739. [2] L. H. J., June 9, 1739.

vaded by having taxes laid upon us without any law, and ordinances made by our Proprietary or his Governor, with the advice of a Council of his own choosing who share in the spoils of the People by holding the principal offices of the Government, imposed on us as laws. . . . To complete our misfortune, after our repeated and fruitless solicitations to his Lordship's Governor for relief, we endeavored to make a law for taxing ourselves in order to raise a fund whereby to enable us to lay our grievances at your Majesty's feet and implore your royal protection; yet we cannot obtain to that law the assent of his Lordship's Council, who, as we conceive without legal authority, have assumed a share in our Legislature and a separate negative on all laws proposed by the delegates in Assembly and holding their places in Council, as well as their offices in Government, at his Lordship's will and pleasure, are absolutely under his direction and serve only to screen him or his Governor from the imputation of anything that is transacted hurtful or oppressive to the People. . . . May it therefore please your Majesty to take our condition into your consideration and give instructions to the Proprietary, his Governor and Council here, that a law may be assented to for raising money on ourselves whereby the House of Delegates for the time being may be enabled to employ fit agents and council to lay our case in a proper manner before your Sacred Majesty."[1]

Ferdinand John Paris was appointed agent, and for at least five years was paid with money raised by subscription. He was directed to present the petition to the lord proprietor, give his Lordship three months to consider it, and, if the answer of the proprietor was wholly unsatisfactory, then to lay the address before the king.

But the governor and council caused delay in the

[1] L. H. J., June 11, 1739.

agent's proceedings by refusing the ageney committee access to the records, on the ground that no persons could act as a committee of the lower house except during a session of the Assembly. This incensed the lower house still more. Furthermore, by the time the petition had been presented to the lord proprietor, the Assembly had passed a supply bill for the purpose of aiding the mother country in an expedition to the West Indies. As this naturally called for an address to the crown, the lower house prepared one and inserted in it the following clause: "Although our situation be remote, and we live under a proprietary government, yet we hope we are not beyond the extensive influence of your Majesty's just and mild administration, and think it our greatest happiness that we can have recourse to your Royal Person for protection whenever we may be put to the necessity of imploring it."[1] The agent not only saw that this address was properly presented, but he caused it to be printed in the *London Gazette*. And when there was talk in London about the small number of men which Maryland had sent on the expedition, he told how the lower house had made ample provision for sending five hundred, though only two hundred had gone.

The situation became thoroughly alarming to the lord proprietor. In a most conciliatory answer to the petition from the lower house, he expressed the utmost willingness to redress the people's grievances.[2] He recalled the governor toward whom the lower house had become offended and put in his place a native of the province. He ceased to demand that grants containing surplus land be vacated. He gave up his claim to alienation fines on lands devised. He gave up the attempt to obtain money from ferry licenses. He

[1] L. H. J., July 29, 1740; see also the Dulany Papers.
[2] L. H. J., May 2, 1744.

privately expressed a readiness to relinquish his claim to the right of creating new offices. He made a generous offer with respect to an equivalent for his quit-rents. Furthermore, it was during this period of threat to appeal to the crown that the lower house won its series of victories in the contests with the upper house over parliamentary procedure and the fund for arms and ammunition.[1] And the period closed with the passage of the bill for the inspection of tobacco and the regulation of officers' fees.

The tobacco duty and the port duty continued to be collected; and the lord proprietor directed the governor to take every possible measure necessary to prevent the establishment of an agency, on the ground that it would cause a sea of trouble as well as unnecessary expense. But it is probable that the lower house, through fear of defeat, had no desire to have the crown decide the question relating to those duties;[2] at the same time, with every future rejection of the agency bill, the chief demagogues in that house persuaded the more ignorant people that the rejection was due to the lord proprietor's consciousness that the imposition and collection of the two duties in question were illegal.

In this way a state of unrest was prolonged until the fourth intercolonial war, when the agency question again came to the front. The attempt to secure acceptable supply bills from the lower house, by laying before it words of censure from the home government, served only to draw from that body the charge that the Assembly's transactions had not been represented in a true light.[3] In the year 1761 the lower house expressed to the king its concern for the small amount of service which Maryland had given in the war, but asked him not to entertain on that account any unfavorable opinion of the people of the province until a

[1] *Supra*, pp. 292–303. [2] *Ibid.*, pp. 91, 347. [3] *Ibid.*, p. 338.

full inquiry had been made into the cause of their not giving more, and until they should be permitted to have an agent who might lay before him all the grievances suffered under the proprietary government.[1] One year later, also, when Governor Sharpe endeavored to convince the lower house that the transmission of the Assembly journals to his Majesty's ministers made an agent unnecessary, he received in reply the following: "Since it seems to be your Excellency's opinion that we have no occasion for an agent in the particular instance mentioned in your message for reasons which may be extended to every other cause of complaint, we think it amounts to little less than a general denial of the expediency of establishing a person in that character. This we conceive a doctrine of so dangerous a tendency to the rights of our constituents that we must insist a little on your Excellency's patience while we explain and enforce the right of the people to appoint an agent and the expediency of enforcing that right. The great end of employing an agent is to represent and bring to a final determination any matter in dispute with the Proprietary by which the people may apprehend themselves aggrieved. For, if the people think themselves aggrieved, they have a right to apply to his Majesty for redress. If they have this right, it follows that they must have a right of the means of giving his Majesty the fullest information upon the subject of their appeals. And this no doubt his Majesty from his known love of justice and tenderness to all his subjects would require. So we conceive it is not only an invasion of the people's privileges, but derogatory from his Majesty's dignity to withhold from him the clearest lights we can give him for the information of his judgment. We hope, therefore, we shall be excused if we say it is too assuming in a governor to

[1] L. H. J., April 22, 1761.

undertake to judge of the expediency of a people's having an agent to support their interests when he may be considered the delegate of the Lord Proprietary, against whom they may be desirous to exhibit their complaints, and the subordinate instrument of those very encroachments by which they are aggrieved."

The governor and the upper house, however, stood firm. The restoration of peace put an end to the dispute over the supply bills. The lord proprietor gave up his claim to the license money from ordinaries. So the need of an agent after the war was no greater than before it, except to have the crown decide the case about paying the clerk of the council.[1] As if for this purpose, the lower house employed Charles Garth as its agent.[2] He was paid for a time with money raised by subscription and by a lottery. Instead, however, of being directed to attend at once to the clerk's case, he was asked first to seek an order from the crown whereby the people of Maryland should be permitted to tax themselves for the maintenance of a permanent agency. And very soon — before the desired order had been obtained — the people's grievances against Parliament and the crown itself became far greater than those against their all but vanquished lord proprietor. The agency question was accordingly lost sight of in the uprising of the people against the power to which they had hitherto seemed so anxious to appeal for protection.

Ceaseless opposition to the lord proprietor and industrial dependence on the mother country had caused the people of Maryland, previous to the fourth intercolonial war, to look upon the home government as their benefactor and protector, and to quite overlook the encroachments on their

[1] *Supra*, pp. 372, 373.

[2] L. H. J., December 6, 1766; Sharpe's Correspondence, Vol. III, pp. 348, 356, 384.

independence that were made under the guise of the acts of trade. In the year 1718 the attorney for his Majesty's surveyor general of the customs caused some disturbance by prosecuting suits in the superior courts for the recovery of trifling sums.[1] Upon hearing, in the year 1731, that Parliament was about to pass an act placing restrictions on manufactures within the colonies, the lower house showed some uneasiness. And on several occasions that house asked that Maryland, in the interest of her fishing industry, be given the liberty of importing salt from all parts of Europe.[2] But with these three exceptions, it does not appear that, previous to the fourth intercolonial war, there was any friction between a proprietary Assembly of Maryland and the home government.

By that time, however, Maryland was prepared to pursue a different course toward the mother country. With the development of her large resources in the West, she was rapidly becoming industrially independent. Her social force was increasing in a geometrical ratio. With the many triumphs of the lower house over the other branches of the legislature, the people had become conscious, in a high degree, of their political power, and, consequently, were strongly attached to their constitution. The lower house was determined to guard at any cost the rights which had already been acquired; and it was far more eager to further increase those rights, by winning new victories over the lord proprietor, than it was to assist the mother country to defeat the French or the other colonies to acquire new territory. If the home government had given assistance against the lord proprietor, the Maryland Assembly might have made liberal appropriations for carrying on the war. But, instead, the

[1] L. H. J., May 5, 9, 1718, April 9, 1720.
[2] *Ibid.*, July 17, 1732; U. H. J., May 4, 1736.

home government endeavored to bring about a union of the colonies, whereby its power over them might be increased, — even to taxing them, it was feared, — and in the dispute over supply bills it took the part of the lord proprietor rather than that of the lower house. Maryland, as a consequence, showed her readiness to oppose the plan of union, and gave but little assistance toward carrying on the war. Out of these conditions arose the struggle between her and the mother country.

After the Maryland commissioners had returned from the Congress at Albany and had laid before the lower house the plan of union which had been considered there, the members of that house unanimously disapproved of the said plan on the ground that it "manifestly tended to the destruction of the Rights and Privileges" of the people of Maryland. A few days later they expressed their disapproval to the governor in the following words, "We do not conceive that the commissioners were intended or empowered to agree upon any plan of a proposed union of the several colonies to be laid before the parliament of Great Britain with humble application for an act by virtue of which one general government may be formed in America, and therefore do not think ourselves obliged to take any particular notice of their minutes of proceedings relative thereto; but as it has been laid open to our view we cannot, consistent with our duty to our constituents, forbear to observe in general that the carrying the said plan into execution would absolutely subvert that happy form of government which we have a right to by our charter (the freedom of which was doubtless one great inducement to our ancestors to leave their friends and native country and venture their lives and fortunes among a fierce and savage people in a rough, uncultivated world)

and destroy the Rights, Liberties, and Properties of his Majesty's loyal subjects of this Province." [1]

During the progress of the war, not only did Maryland fail to comply with most of the requisitions made upon her by the home government, but the lower house struck directly at the royal prerogative by inserting in its supply bills a clause to forbid Maryland troops from serving outside of the province.[2] This course so incensed the prime minister, Mr. Pitt, that he avowed his intention of bringing the colonies into such subjection, when peace should be restored, as would enable the home government to compel obedience to its requisitions; and although Mr. Pitt afterward became the champion of American liberties, the conduct of Maryland during that war was a source of much strength to the members of Parliament who worked for the passage of the famous Stamp Act.

While Parliament was considering this scheme for taxing the colonies, Governor Sharpe avoided meeting the Assembly, somewhat to the discomfiture of the liberal leaders; and even after the news had been received, in April, 1765, that the act was quite sure to pass, the prevalence of small-pox, which had broken out in the preceding month, caused the meeting to be delayed several months longer.

In the meantime, however, articles had appeared in the Virginia, New York, Boston, and Connecticut *Gazettes* warmly denouncing the act; and in August, upon the arrival of Hood, the stamp distributer for Maryland, his effigy was whipped, stood in the pillory, hanged, and burned at several places within the province.[3] On the night of the second of September, a mob, numbering from three to

[1] L. H. J., March 10, 1755.

[2] *Supra*, pp. 331, 332.

[3] *Maryland Gazette*, August 29 and September 5, 1765.

four hundred, pulled down the house which he was preparing for the reception of a cargo of goods; and as the governor had no military force with which to prevent such proceedings, Hood's relatives, fearing for his safety, advised him to depart out of the province. He readily took the advice, and did not return to discharge the duties of the office which he had solicited.[1]

Having got rid of Hood and the small-pox, several of the leading lawyers and other prominent men signed a petition to the governor for convening the Assembly. This was strongly desired, in order that the lower house might choose delegates to the congress at New York, which was to frame a petition to the home government for the repeal of the Stamp Act. As the governor and council feared that a refusal to proceed at once to convene the Assembly would cause great disorder, and probably end in a meeting of the delegates at the call of their constituents, the prayer of the lawyers' petition was granted.[2]

The Assembly met September 23, 1765. From the first day of its meeting, the lower house gave its undivided attention to the Stamp Act. After due consideration of letters from Massachusetts, William Murdock, Edward Tilghman, and Thomas Ringgold were chosen delegates to the congress at New York, and among their instructions was the following: "You are there to join in a general and united, dutiful, loyal, and humble representation to his Majesty and the British Parliament, of the circumstances and condition of the British colonies; and to pray relief from the burdens and restraints lately laid upon their trade and commerce, and especially from the taxes imposed by the Stamp Act, whereby they are deprived, in some instances, of that invaluable privilege of Englishmen

[1] Sharpe's Correspondence, Vol. III, pp. 220, 221, 223.
[2] *Ibid.*, pp. 230, 231.

and British subjects, trials by juries; and to take care that such representation shall humbly and decently, but expressly, contain an assertion of the rights of the colonies to be exempt from all and every taxations and impositions upon their persons and property to which they do not consent in a legislative way, either by themselves or their representatives freely chosen and appointed."[1]

A few days later the same house, upon considering the grievances that would arise from an execution of the Stamp Act, passed the following resolutions as declarative of the constitutional rights and privileges of the freemen of Maryland: —

I. *Resolved, unanimously*, That the first adventurers and settlers of this province of Maryland brought with them and transmitted to their posterity, and all other his Majesty's subjects, since inhabiting in this province, all the liberties, privileges, franchises, and immunities, that at any time have been held, enjoyed, and possessed, by the people of Great Britain.

II. *Resolved, unanimously*, That it was granted by Magna Carta, and other the good laws and statutes of England, and confirmed by the Petition and Bill of Rights, that the subject should not be compelled to contribute to any tax, talliage, aid, or other like charges not set by common consent of Parliament.

III. *Resolved, unanimously*, That by a royal charter, granted by his Majesty, King Charles I in the eighth year of his reign and in the year of our Lord one thousand six hundred and thirty-two, to Cecilius, then Lord Baltimore, it was, for the encouragement of the people to transport themselves and families into this province, among other things, covenanted and granted by his said Majesty for himself, his heirs, and successors, as followeth:

[1] L. H. J., September 24, 1765.

. . . "And further, our pleasure is, and by these presents for us, our heirs and successors, we do covenant and grant, to and with the said now Lord Baltimore, his heirs and assigns, that we, our heirs and successors, shall, at no time hereafter, set or make, or cause to be set, any imposition, custom or other taxation, rate or contribution whatsoever, in or upon the dwellers and inhabitants of the aforesaid province, for their lands, tenements, goods or chattels, within the said province, or in or upon any goods or merchandises within the said province, or to be laden and unladen within any of the ports or harbors of the said province: And our pleasure is, and for us, our heirs and successors, we charge and command, that this our declaration shall be henceforward, from time to time, received and allowed in all our courts, and before all the judges of us, our heirs and successors, for a sufficient and lawful discharge, payment, and acquittance: commanding all and singular our officers and ministers of us, our heirs and successors, and enjoining them upon pain of our high displeasure, that they do not presume, at any time, to attempt anything to the contrary of the premises, or that they do in any sort withstand the same; but that they be at all times aiding and assisting, as is fitting, unto the said now Lord Baltimore, and his heirs, and to the inhabitants and merchants of Maryland aforesaid, their servants, ministers, factors, and assigns, in the full use and fruition of the benefit of this our charter."

IV. *Resolved*, That it is the unanimous opinion of this house that the said charter is declaratory of the constitutional rights and privileges of the freemen of this province.

V. *Resolved, unanimously*, That trials by juries are the grand bulwark of liberty, the undoubted birthright of every Englishman, and consequently of every British subject in America: and that the erecting other jurisdictions

for the trial of matters of fact is unconstitutional, and renders the subject insecure in his liberty and property.

VI. *Resolved*, That it is the unanimous opinion of this house that it cannot, with any truth or propriety, be said that the freemen of this province of Maryland are represented in the British Parliament.

VII. *Resolved*, *unanimously*, That his Majesty's liege people of this ancient province have always enjoyed the right of being governed by laws, to which they themselves have consented, in the articles of taxes and internal polity; and that the same hath never been forfeited, or any way yielded up, but hath been constantly recognized by the king and people of Great Britain.

VIII. *Resolved*, That it is the unanimous opinion of this house that the representatives of the freemen of this province, in their legislative capacity, together with the other parts of the legislature, have the sole right to lay taxes and impositions on the inhabitants of this province, or their property and effects, and that the laying, imposing, levying, or collecting any tax on or from the inhabitants of Maryland, under color of any other authority, is unconstitutional, and a direct violation of the rights of the freemen of this province."[1]

Charles Garth was appointed to represent Maryland before the home government, and the concluding words of his instructions sent from the lower house, in December, were: "Is it generous or just that odious distinctions should be made between subjects of the same state? Americans as men are entitled to justice, as subjects to protection, and as British subjects to trials by juries. They have their rights and are grieved at their infraction. Whilst America languished under an almost insupportable load of debt to her Mother Country, her trade, her first

[1] L. H. J., September 28, 1765.

hope, equally advantageous to both, cramped and almost ruined by the act mentioned before [the act restricting the colonial exportation of iron and lumber], and the number and severity of hovering Guarda Costas, came the tremendous Stamp Act armed with all its excessive penalties, big with the entire ruin of more than two million of subjects. Our trade is now at an end. Our specie is drained by remittances. Projects and enterprises have ceased amongst us. Our vessels, our lands, are to be sold, but there are no purchasers. We want the British manufactures, but cannot pay for them. What would Great Britain have? She had everything by her trade the Colonists could command. She cannot have it by her trade and taxes both. By her trade she always had the balance gained by the Colonies from foreigners; by her taxes she throws the trade of the Colonies into the hands of Foreigners."[1]

Finally, a few days after these instructions had been drawn up, the governor was presented with the following remonstrance: "The unhappy prevalence of small-pox from the month of March to that of September last rendered a convention of the Assembly within that time impracticable; but we are ignorant of any reasons that could occasion the long intervention from November, 1763, to last March, within which time circumstances of a peculiar nature required a meeting of the Assembly, which was prevented by prorogation. It is incumbent on us, as the representatives of a free people, to remonstrate against that measure; especially as it prevailed at a time so very critical to the rights of America; at a time when the good people of this province ardently wished for an opportunity to express, by their representatives in assembly, the sense of a scheme then entertained by the British House of

[1] L. H. J., December 6, 1765.

Commons, of imposing stamp duties on the colonies; and for want of which their involuntary silence on a subject so interesting and important has been construed by a late political writer of Great Britain as an acquiescence in that intended project."[1]

Before any of the stamped paper was near, there was a disturbance which made it seem probable that if any of it were brought within reach of the people, they would be no less violent than they had been toward him who was to have distributed it. Early in September, the arrival at Annapolis of an English vessel led a number of people to inquire if any of the paper was on board. When the commander had refused to give a direct answer, one of those who had made the inquiry fastened to his hat a paper on which appeared the words, "No Stamp Act," and, wearing this head-gear, went to the tavern and entered the room in which the commander was sitting. The commander, regarding this as an intended affront, put the man out and ordered four of the crew to keep him out. This led to a dispute between one of the passengers and John Hammond, one of the liberals in the Assembly. The dispute turned into a fight, and Hammond was worsted. But during the fight, the cry went through the town that the commander was murdering Hammond; and this brought a crowd which wounded the commander quite severely and forced Hammond's antagonist to swim aboard in order to save his life.[2]

This affair, the treatment of Hood, and the refusal of the lower house to give its consent to the landing of some of the paper that was later brought within the harbor of Annapolis, caused the governor and council to fear that, if landed, its burning could not be prevented; and, as a

[1] L. H. J., December 13, 1765.

[2] Sharpe's Correspondence, Vol. III, p. 226.

consequence, none of the stamped paper ever cast a shadow on Maryland soil.[1]

At the same time so great was the regard for law that in nearly all the counties the courts were permitted for several months to defer doing business that by the act of Parliament required the use of stamped paper. The Frederick County court, however, did not hesitate from the first. It sat in November, 1765, just after the act was to have gone into effect, and proceeded with all its regular business after it had expressed itself as follows: "It is the unanimous resolution and opinion of this court that all the business thereof shall and ought to be transacted in the usual and accustomed manner without any inconvenience or delay to be occasioned from the want of stamped paper, parchment, or vellum, and that all proceedings shall be valid and effectual without the use of stamps, and they enjoin and order all sheriffs, clerks, counsellors, attorneys, and all officers of the court to proceed in their several avocations as usual, which resolution and opinion are grounded on the following and other reasons: —

"First. It is conceived there hath not been a legal publication yet made of any act of Parliament imposing a stamp duty on the Colonies. Therefore this court are of the opinion that until the existence of such an act is properly notified it would be culpable in them to permit or suffer a total stagnation of business which must inevitably be productive of innumerable injuries and have a tendency to subvert all principles of civil government.

"Second. As no stamps are yet arrived in this Province, and the inhabitants have no means of procuring any, this court are of opinion that it would be an instance of the

[1] L. H. J., September 20 and November 6, 1765; Sharpe's Correspondence, Vol. III, p. 232.

most wanton oppression to deprive any person of a legal remedy for the recovery of his property for omitting that which it is impossible to perform."

The publication of the *Maryland Gazette*, which, out of respect for law, the editor had discontinued in October, 1765, was resumed on January 30, 1766, with a confession that its discontinuance had been due to an error in judgment.

On the twenty-fourth day of the following month several prominent men of Baltimore County organized themselves as Sons of Liberty, resolved to oblige the several provincial officers to open their respective offices and proceed to business, and invited the gentlemen of the neighboring counties to organize themselves likewise and meet them at Annapolis to join in the undertaking. Accordingly, only two days later, Baltimore, Anne Arundel, and Kent counties were represented in a meeting at Annapolis ; and after hearing different proposals and debating thereon with decency, coolness, and order, it was resolved to make a written application to the chief justice of the provincial court, the secretary, the commissary general, and the judges of the land office to open their respective offices and proceed as usual to the execution of their duties on the thirty-first day of March, or sooner, if a majority of the supreme courts in the northern colonies should proceed to business before that time. Before adjourning, it was further resolved to invite the Sons of Liberty in every county to have at least twelve of their number present at Annapolis on the last day of March to see the event of the application already made.[1] The second meeting was held on the day appointed. The provincial court at first refused what was asked even upon the second application ; but when the Sons of Liberty persistently demanded immediate

[1] *Maryland Gazette*, March 6, 1766.

compliance, the court yielded. The secretary, the commissary general, and the judges of the land office likewise did as the Sons of Liberty requested.[1] Before the news of the repeal of the offensive act had come, in April, six of the county courts had, in the March session, done business as formerly, and there was little doubt but that the other eight would follow their example in the coming June.

In Maryland, as in the northern colonies, the act was, therefore, as good as nullified before it was known that it had been repealed. Nevertheless, the news of the repeal was an occasion of great rejoicing — an occasion, also, of exalting the already recognized talents of Daniel Dulany, the secretary of the province, whose words probably had greater weight with Parliament in passing the act of repeal than did those of any other American. In his celebrated essay against the act Dulany pointed out, in a clear, simple, and forcible manner, that the colonists not only were not represented in Parliament, but could not be effectually represented in that body; that taxation without representation was a violation of the common law of England; that each of the colonial charters was designed to make the colonists more secure in their rights as British subjects by declaring and confirming their right to the protection of that common law, and that in no previous exercise of parliamentary power over the colonies was revenue the single or even the direct purpose. With far-reaching sagacity, he maintained that the colonists by manufacturing for themselves would remove the danger of being oppressed, and teach the mother country to regard her colonies as a part of herself and not merely as her possessions. On this point a few of his own words were: "Let the manufacture of America be the symbol of dignity, the badge of virtue, and it will soon break the fetters of distress. A garment

[1] *Maryland Gazette*, April 3, 1766.

of linsey-woolsey, when made the distinction of real patriotism, is more honorable and attractive of respect and veneration than all the pageantry, and the robes, and the plumes, and the diadem of an emperor without it. Let the emulation be not in richness and variety of foreign production; but in the improvement and perfection of our own. Let it be demonstrated that the subjects of the British empire in Europe and America are the same, that the hardships of the latter will ever recoil upon the former. In theory it is supposed that each is equally important to the other, that all partake of the adversity and depression of any. The theory is just, and time will certainly establish it; but if another principle should be ever hereafter adopted in practice and a violation deliberate, cruel, ungrateful, and attended with every circumstance of provocation be offered to our fundamental rights, why should we leave it to the slow advance of time . . . to prove what might be demonstrated immediately? Instead of moping, and puling, and whining to excite compassion; in such a situation we ought with spirit, and vigor, and alacrity, to bid defiance to tyranny by exposing its impotence, by making it as contemptible as it would be detestable. By a vigorous application to manufactures, the consequence of oppression in the colonies to the inhabitants of Great Britain would strike home immediately. None would mistake it. Craft and subtilty would not be able to impose upon the most ignorant and credulous; for if any should be so weak of sight as not to see, they would not be so callous as not to feel it. Such conduct would be the most dutiful to the mother country. It would point out the distemper when the remedy was easy." It was acknowledged in the northern colonies that this essay "poured in light where all was darkness."[1]

[1] Dulany Papers.

From it, the great Pitt, in speaking for repeal, derived power. Amid the rejoicing that followed the news of the repeal, Dulany's health was drunk many times both within and beyond the borders of Maryland.[1]

And yet there were English politicians who were too narrow, too vain, or too short-sighted to learn what Dulany had endeavored to teach them. They still contended that it was expedient to tax the colonies. The rash Townshend, boasting "that he knew how to draw a revenue from the colonies without giving them offence," prevailed upon Parliament, in the year 1767, to impose duties on tea, glass, paper, and painters' colors, and to authorize the customs officers to make use of general writs of assistance whereby they would be empowered at their pleasure to make a forcible entry into any private house for the purpose of searching for smuggled goods.

Upon hearing that such duties were to be collected in such a manner, the Assembly of Massachusetts sent a circular letter to the other assemblies, urging that harmonious petitions against such acts of parliament be made to the home government. Hillsborough, secretary of state, requested Governor Sharpe to do his utmost to prevail upon the Assembly of Maryland to treat the Massachusetts letter "with the contempt it deserved." Sharpe, accordingly, asked that no notice be taken of the said letter.[2] But the lower house, in its reply given June 21, 1768, interpreted this as an interference with the right of petition, declared it should not be prevented by intimidation from doing what was right, and then concluded as follows: "What we shall do upon this occasion, or whether, in consequence of that letter, we shall do anything, it is not our present business to communicate to your Excellency: but of this, be pleased to be assured, that we cannot be prevailed on to

[1] *Maryland Gazette.* [2] C. R., June 20, 1768.

take no notice of, or to treat with the least degree of contempt, a letter so expressive of duty and loyalty to the Sovereign, and so replete with just principles of liberty; and your Excellency may depend that whenever we apprehend the rights of the people to be affected, we shall not fail boldly to assert, and steadily endeavor to maintain and support them, always remembering what we could wish never to be forgot, that by the Bill of Rights it is declared, 'That it is the right of the subject to petition the king, and all commitments and prosecutions for such petitioning are illegal.'"

On the same day, the same house drew up the following petition to the king: —

"Your Majesty's most dutiful and loyal subjects, the representatives of your Province of Maryland, happy in their allegiance to the best of Kings, and warm in affection and attachment to your sacred person and government, with all humility beg leave to approach the throne and supplicate your Majesty, ever graciously inclined to hear the just complaints of your most remote subjects.

"Your Majesty's people of this province conceive it a fixed and unalterable principle in the nature of things, and a part of every idea of property, that whatever a man hath honestly acquired cannot be taken from him without his consent: This immutable principle they humbly apprehend is happily ingrafted as a fundamental into the English constitution as is fully declared by Magna Carta and by the Petition and Bill of Rights. Hence it is that your Majesty's most distant subjects are justly entitled to all the rights, liberties, privileges, and immunities of your subjects born within the Kingdom of England. [Here the exemption clause in the Maryland charter is quoted.]

"It is therefore with the deepest sorrow, may it please your most excellent Majesty, that we now approach the

throne on behalf of your faithful subjects of this province with all humility to represent to your Majesty that by the several Statutes lately enacted in the Parliament of Great Britain by which sundry rates and duties are to be raised and collected within your Majesty's Colonies in America for the sole and express purpose of raising a revenue, this great fundamental principle of the Constitution is, in our opinion, infringed. The people of this Province, Royal Sir, are not in any manner nor can they ever possibly be effectually represented in the British Parliament; while therefore your Majesty's Commons of Great Britain continue to give and grant the property of the people in America, your faithful subjects in this and every other colony must be deprived of that most invaluable privilege, the power of granting their own money; and of every opportunity of manifesting by cheerful aids, their attachment to the King, and zeal for his service, they must be cut off from all intercourse with their Sovereign, and expect not to hear of the royal approbation. they must submit to the power of the Commons of Great Britain, and, precluded the blessings, shall scarcely retain the name of freedom.

"May we then, most gracious Sovereign, be permitted humbly to implore your tender consideration of this unhappy circumstance of your American people. May we pray that your Majesty will extend to your faithful people of Maryland that paternal regard which your Majesty hath so invariably shown to the just rights of all your subjects; and be graciously pleased to grant them such relief as to your Majesty's wisdom and justice shall seem meet." [1]

For this non-compliance with the request of the home government, made in Hillsborough's letter, the governor

[1] L. H. J., June 21, 1768.

immediately prorogued the Assembly — refraining from dissolving it only through fear of the consequences; and thereafter the contest with the mother country was carried on independently of the Assembly, which for several sessions was so busily and so warmly engaged in the controversy over fees and over the clergy. An organization was nevertheless required for that contest. With the widening of the breach between the colonies and the mother country, the new organization of Maryland became possessed of all the powers of government. For a time the new popular government and the old proprietary government existed side by side; but gradually the new caused the old to disappear. And the admirable way in which this transition was made was due both to the irresolution and bountiful good nature of Governor Eden and to the fact that the statesmen of Maryland were not only skilled in private law but were adepts in public law and not intoxicated with an emotional political philosophy so prevalent in those days.

Within less than a year after the above-mentioned prorogation, several of the counties entered into resolutions of non-importation of British superfluities.[1] Then the people of Anne Arundel County sent out an invitation for committees from the several counties to meet at Annapolis for the purpose of forming a non-importation association for the whole province. A full meeting was the response; and on June 22, 1769, after agreeing that the imposing of the offensive duties had a direct and manifest tendency to deprive the colonists of all political freedom, and that the circumstances made it necessary to prevent the use of foreign luxuries and superfluities, it was resolved not to import any of the dutiable goods — except small quantities of paper — not to import from Great Brit-

[1] *Maryland Gazette*, May 11, 1769.

ain any of the articles of merchandise included in a list of about one hundred named in the resolutions; not to import any wines whatever, or purchase the same from any person whatever; not to kill or suffer to be killed any ewe lamb yeaned before the first of May of any year; and not to deal with any one violating or taking advantage of the resolutions, but to regard him as an enemy.[1] After the meeting the resolutions, drawn up in the form of an agreement, were circulated in each of the counties for signatures.

While this agreement was being signed, the news came that the home government had decided to take off all the duties except that on tea. Yet that decision had been arrived at not on the ground that those duties were unjust to the colonies, but on the ground that — being laid on articles of British manufacture — they were "contrary to the true principles of commerce." It was still maintained that it was expedient to raise a revenue in the colonies; and, what was still more offensive to some colonists, there was a movement to revive the statutes of Henry VIII, for the punishment of treason committed out of the king's dominions, and so to construe it that persons charged with treason in America might be carried to England for trial.

From the first, the removal of the duties on glass, paper, and colors caused many colonists outside of Maryland to be disposed to give up the non-importation association. But in Maryland, committees from the several counties met again at Annapolis in December, 1769, and unanimously resolved that the resolutions passed at the June meeting "be most strictly adhered to, and preserved inviolate," and that each and every gentleman present would "use his utmost endeavor to those laudable ends."[2] Two

[1] *Maryland Gazette*, June 29, 1769.

[2] *Ibid.*, December 21, 1769.

months later, upon the arrival in Annapolis of a brig with a cargo of British goods, a meeting of the citizens of Annapolis appointed a committee to inquire into the matter. When that committee had reported that the goods had been ordered and shipped contrary to the non-importation agreement, and therefore ought not to be landed, the brig was ordered and compelled to return to London with all her cargo. For some time there was such firmness and unity in Maryland with respect to non-importation that British merchants were brought to a determination not to ship any goods to that province but such as would be agreeable to the associators.[1] Even when, in October, 1770, the Baltimore merchants — directly influenced by the Philadelphia merchants — resolved no longer to abide by the agreement, there was another meeting of men from the counties, held at Annapolis, at which it was resolved that the Baltimore merchants had "shown a shameful disregard as well to their own engagement as to the most sacred rights and liberties of America, and that no goods should be taken from those who broke the agreement."[2]

For more than three years after this last meeting, all was quiet between Maryland and the mother country. But during those years, the destruction of tea in Boston harbor had caused Parliament to pass an act for closing the port of Boston, and to consider a measure for subjecting the people of Massachusetts to a military control; and when this news reached Maryland in May, 1774, the feeling became so intense in that province that rapid progress was made toward a more extensive popular organization.

At Annapolis and in the counties, meetings were called for choosing a committee of correspondence; and at some of those meetings it was recommended that a convention of deputies, chosen by the several counties, be held at

[1] Eddis, p. 142 *et seq.* [2] *Maryland Gazette*, November 1, 1770.

Annapolis as soon as convenient for uniting all parts of the province in an association, and that, if agreeable to the sense of the sister colonies, delegates be appointed to attend a general congress of delegates from the other colonies to effect unity.[1] In accordance with that recommendation a convention of ninety-two deputies — varying from three to twelve for each county — met at Annapolis on the twenty-second day of June, 1774. It was first agreed that each county should have but one vote, and that a majority of votes should determine any question. Then it was resolved that the last offensive measures of Parliament were cruel and oppressive invasions of the natural rights of the people of Massachusetts as men, and of their constitutional rights as English subjects, and that they laid the foundation for the utter destruction of British America. It was, accordingly, further resolved that subscriptions be opened for the relief of the people of Boston, that all commercial intercourse with the mother country be broken off, and that there should be no dealings with the people of any colony that should refuse to join in the general plan. Lastly, this convention recommended that a congress of delegates from all the colonies should assemble at an early date; it appointed Matthew Tilghman, Thomas Johnson, Jr., Robert Goldsborough, William Paca, and Samuel Chase delegates for Maryland; and it directed that they should on their return call the county deputies together again, and lay before them the measures adopted by the general congress.[2]

That general congress assembled at Philadelphia on September 5, 1774, and in the following month the Marylanders had their tea burning. In October of this year there arrived at Annapolis the brig *Peggy Stewart*, with an assorted cargo, in which were seventeen packages

[1] *Maryland Gazette*, May 26, 1774. [2] *Ibid.*, June 30, 1774.

of tea consigned to James and Joseph Williams, merchants of that city. Anthony Stewart, the owner of the brig, was one of the signers of the non-importation agreement; but in order to land the rest of the cargo, he paid the duty on the tea. Thereupon, the four members of the committee for Anne Arundel County that were in the city called a meeting of the people. At that meeting it was unanimously resolved that the tea should not be landed, and a committee of twelve was appointed to attend the landing of the other goods and prevent the landing of the tea. A little later eight of the standing committee for the county called the two Williamses and Stewart before them; and after considering their offer to destroy the tea and humbly confess their offence, the committee was of the opinion that nothing further ought to be required. But this was not satisfactory to all the people, and not only was the tea burned, but Stewart, fearing a riot, offered to burn the brig with his own hands. His offer was accepted, and the crowd watched until it was burned to the water's edge.[1]

The Maryland delegates to the Continental Congress at Philadelphia issued a call on the third day of November, 1774, for the county deputies to meet at Annapolis on the twenty-sixth day of the same month. Between the day of the call and the day of the meeting there was elected in each of the several counties — by those who were qualified to vote for delegates to the lower house of the proprietary assembly — a large committee of observation for carrying into execution the association that had been agreed upon in the Continental Congress, a much smaller committee of correspondence, and deputies to the provincial convention. When the convention was opened on the twenty-first, several of the counties, from lack of sufficient notice of the

[1] *Maryland Gazette*, October 20, 1774.

time of meeting, were not fully represented; and so, after the proceedings of the Continental Congress had been unanimously approved, there was an adjournment to the eighth day of December. But at the adjourned meeting eighty-five deputies were present, and they resolved that no inhabitant of the province ought to kill a sheep under four years of age, that more flax, hemp, and cotton ought to be raised, that the manufacture of cotton and linen goods ought to be increased, that all men between the ages of sixteen and fifty ought to form themselves into militia companies; they also resolved, unanimously, that if an attempt should be made to carry into execution by force in that colony the late acts of parliament, relative to Massachusetts, or if an effort should be made to execute by force, in that or any other colony, the assumed power of Parliament to tax the colonies, Maryland would support those attacked to the utmost of her power. In accordance with the agreement made at the Continental Congress that Maryland should raise £10,000, this sum was now apportioned among the several counties, and the committee of observation in each county was authorized to lay out what should be raised in the purchase of arms and ammunition. Deputies to the next Continental Congress were appointed and authorized to agree to all measures which such congress should deem necessary and effectual to obtain a redress of American grievances. A committee of observation for the whole province was also appointed and given directions with respect to calling the next provincial convention.[1]

That convention met on April 24, 1775, and continued in session nine days. One hundred deputies were present, they voted to raise £600 more by subscription, and they passed the following resolutions: "Resolved that his

[1] *Maryland Gazette*, December 15, 1774.

Majesty King George III is lawful and rightful King of Great Britain, and the dominions thereunto belonging, and that the good people of this province do owe, and will bear faithful and true allegiance to our said lawful and rightful King, as the sovereign, constitutional guardian, and protector of the rights of all his subjects.

"Resolved, that it is earnestly recommended to the inhabitants of this province to continue the regulation of the militia, and that particular attention be paid to forming and exercising the militia throughout the province, and that subscriptions for the purposes by the said convention recommended be forthwith completed and applied.

"Resolved, that it is the sense of this convention that the Honorable Matthew Tilghman, Esq., Thomas Johnson, Jr., Robert Goldsborough, Samuel Chase, William Paca, John Hall, and Thomas Stone, Esquires, the delegates of our province, or any three or more of them, do join with the delegates of the other colonies and provinces, at such time and place as shall be agreed on, and in conjunction with them deliberate upon the present distressed and alarming state of the British Colonies in North America, and concur with them in such measures as shall be thought necessary for the defence and protection thereof, and most conducive to the public welfare. And as this convention has nothing so much at heart as a happy reconciliation of the differences between the mother country and the British Colonies in North America, upon a basis of constitutional freedom, so has it a confidence in the wisdom and prudence of the said delegates, that they will not proceed to the last extremity, unless in their judgments they shall be convinced that such measure is indispensably necessary for the safety and preservation of our liberties and privileges. That in the present state of public affairs, this convention is sensible that measures

to be adopted by the Continental Congress must depend upon many events which may happen to arise; and relying firmly upon the wisdom and integrity of their delegates, this province will, as far as in their power, carry into execution such measures as shall be agreed on and recommended by the general congress."[1]

That there should be a reconciliation with the mother country was still the prevailing desire in Maryland, but the course of events in the north was against it; and after the news of the engagements at Concord and Lexington, and the news of the battle of Bunker Hill had been received, the need of a better organized provisional government was felt. To that end, therefore, the convention again assembled on the twenty-sixth day of July, 1775, and, as the basis of the new government, issued the following declaration and pledge, which was subscribed first by the deputies themselves and then offered for subscription to the freemen in the several counties: —

"The long premeditated, and now avowed, design of the British government, to raise a revenue from the property of the colonists without their consent, on the gift, grant, and disposition of the Commons of Great Britain; and the arbitrary and vindictive statutes passed under color of subduing a riot, to subdue by military force and by famine the Massachusetts Bay; the unlimited power assumed by Parliament to alter the charter of that Province and the constitutions of all the colonies, thereby destroying the essential securities of the lives, liberties, and properties of the colonists; the commencement of hostilities by the ministerial forces, and the cruel prosecution of the war against the people of Massachusetts Bay, followed by General Gage's proclamation, declaring almost the whole of the inhabitants of the united colonies, by name or de-

[1] *Maryland Gazette*, May 4, 1775.

scription, rebels and traitors, are sufficient causes to arm a free people in defence of their liberty, and justify resistance, no longer dictated by prudence merely, but by necessity; and leave no other alternative but base submission or manly opposition to uncontrollable tyranny. The Congress chose the latter; and for the express purpose of securing and defending the united colonies, and preserving them in safety against all attempts to carry the abovementioned acts into execution by force of arms, resolved that the said colonies be immediately put into a state of defence, and now supports, at the joint expense, an army to restrain the further violence, and repel the future attacks of a disappointed and exasperated enemy.

"We, therefore, inhabitants of the Province of Maryland, firmly persuaded that it is necessary and justifiable to repel force by force, do approve of the opposition by arms to the British troops employed to enforce obedience to the late acts and statutes of the British Parliament for raising a revenue in America, and altering and changing the charter and constitution of the Massachusetts Bay, and for destroying the essential securities for their lives, liberties, and properties of the subjects in the united colonies. And we do unite and associate as one band, and firmly and solemnly engage and pledge ourselves to each other and to America, that we will, to the utmost of our power, promote and support the present opposition, carrying on as well by arms as by the continental association restraining our commerce.

"And as in these times of public danger, and until a reconciliation with Great Britain on constitutional principles is effected (an event we ardently wish may soon take place), the energy of government may be greatly impaired, so that even zeal unrestrained may be productive of anarchy and confusion, we do in like manner unite, associate, and

solemnly engage in the maintenance of good order and the public peace, to support the civil power in the due execution of the laws, so far as may be consistent with the plan of opposition; and to defend with our utmost power all persons from every species of outrage to themselves or their property, and to prevent any punishment from being inflicted on any offenders other than such as shall be adjudged by the civil magistrate, the Continental Congress, our Convention, Council of Safety, or Committees of Observation."

Unrestricted power was reserved for the convention itself, which, in the future, was to be composed of five delegates from each county elected for one year. When the convention was not in session, its power was to be exercised by a council of safety of its own choosing. In each county a committee of observation was also to be elected annually, — the election to be held under the inspection of the delegates of the county for the time being, — and these committees of observations were to execute the will of the convention or of the council of safety.[1]

But so strongly attached to the old constitution of Maryland were the men who organized this provisional government that they still cherished hopes of a reconciliation. In their instructions of January, 1776, for the delegates to the Continental Congress the members of the convention said: "The experience which we and our ancestors have had of the mildness and equity of the English constitution, under which we have grown up and enjoyed a state of felicity not exceeded by any people we know of, until the grounds of the present controversy were laid by the ministry and Parliament of Great Britain, has most strongly endeared to us that form of government from whence these blessings have been derived, and makes us ardently wish for a

[1] *Maryland Gazette*, August 14, 1775.

reconciliation with the mother country upon terms that may insure to these colonies an equal and permanent freedom. To this constitution we are attached, not merely by habit, but by principle, being in our judgments persuaded it is of all known systems best calculated to secure the liberty of the subject, and to guard against despotism on the one hand and licentiousness on the other. Impressed with these sentiments, we warmly recommend to you to keep in your view the avowed end and purpose for which these colonies originally associated, — the redress of American grievances and securing the rights of the colonists." Farther on in these instructions, the delegates were expressly forbidden to assent to a declaration of independence, or to any alliance with any foreign power, or any confederation of the colonies, which would necessarily lead to separation, unless in their judgments such a course should be deemed absolutely necessary for the preservation of the united colonies.

The sentiment in favor of independence was, however, growing in the Continental Congress, and the Maryland delegates soon found themselves alone in holding back. When it had come to this, the convention — mindful of the fact that it had been empowered to exercise its functions only with a view to a reconciliation, and being of the opinion that the sovereign power was in the people — summoned the delegates back from congress and asked the people of each county to instruct their deputies how to act with regard to the Declaration of Independence. The people were by this time ready for the declaration. The restrictions on the Maryland delegates were accordingly rescinded. On the fourth of July they adopted the famous Declaration of Independence, and thereafter even the shadow of the proprietary government was no more.

The year before, Governor Eden, at the request of a com-

mittee of the convention, had given up the arms and ammunition that had been in his keeping as commander-in-chief. By repeated prorogations he had kept the Assembly from sitting since April, 1774. Although after the expiration of the time for which the members of the lower house had been elected he issued new writs of election, yet on June 24, 1776, he left the province, and the convention on the day following forbade the election. With the Declaration of Independence the way was therefore clear for the framing of a new constitution to take the place of the lord proprietor's charter.

From chaos to order and to the triumph of mind over matter, the universe moves on. As the earth is made to yield more of what man needs, society becomes more extensively organized; and as society becomes more extensively organized, the stronger individuals find themselves in an environment conducive to a larger and a higher development. For this reason industrialism is the primary basis of progress. At a time when it was supposed that the material welfare of a nation was determined by the amount of precious metals which she had in her possession, Spain discovered colonies rich in such metals, while England discovered those from which could be had only the raw materials for manufacture. But by the utilizing of such materials English industries were developed, and, as a consequence, a freer government was demanded.

Maryland, although founded by a Catholic, was never intended merely as an asylum for persecuted Catholics, neither was it intended as a utopia in which the relations between members of different religious sects should be regulated solely by the spirit of brotherly love. Lord Baltimore laid a more sure foundation; and the people of

his province sought riches in tilling the soil. For a period of more than one hundred years the larger part of the soil which they tilled was so well adapted to tobacco culture that tobacco was the staple product. While this fact, through industrial dependence, kept the Marylanders in close touch and sympathy with the mother country, through need of tobacco inspection and payment in tobacco for public services, it invigorated the opposition to the lord proprietor. Although tobacco culture was conducive to slave labor, that very fact taught the freemen to value their own freedom all the more highly. The fact that the people were both the tenants of the lord proprietor and the subjects of his government increased the force of the industrial pressure upon the government. And as the lord proprietor, at the very outset, promised religious toleration in the interest of material success, so, throughout the entire colonial era, the church was weak, and social expediency or industrial welfare, instead of religious superstition or bigotry, was made the basis of law.

But through all the years when these industrial forces were making for popular government, a high respect for law was maintained. The first lord proprietor was a trained and skilful administrator, and for forty-three years he laid an orderly foundation. The Baltimore family then degenerated about as fast as the lord proprietor lost power in the government; but from the time the lower house won its victory in the controversy over English statutes the proprietary governors of Maryland, with the exception of two short intervals, were the much-beloved Ogle, Sharpe, and Eden. The men, who, above all others, moulded public opinion, were lawyers of the nobler type. And there was a generally firm adherence to the laws and customs of the mother country.

Under these conditions, the transition from monarchy to

democracy in Maryland was gradual and orderly. In the assembly halls, in the course of regular parliamentary procedure, the representatives of the people exercised their power of debate in the long struggle for greater equality of rights to life and to property. After many failures, a thriving industrial system, with a sound currency, was established; and by the close of the colonial era commodious public buildings were in process of construction, roads were being built, there was a growing impatience for the establishment of a better school system, and the consciousness of the need of competent religious teachers had been quickened. Above all, public life in proprietary Maryland had proved to be an excellent school for the training of men in statecraft.

Naturally, therefore, the truly patriotic statesmen of Maryland longed for a reconciliation with the mother country, in order that their old government might be continued. But when it was seen that this was not to be, Maryland joined with her sister colonies in severing the maternal tie; and after that, the statesmen of the Maryland school contributed largely of their power in making, perfecting, and preserving the now much cherished federal tie. When the larger commonwealths were trying to make good their claim to territory west to the Mississippi and even to the Pacific, and when the Articles of Confederation had been signed by all the other commonwealths, Maryland refused to sign them until the claims in question had been disallowed. As a consequence, a greater equality among the old commonwealths was preserved, and the general government came into the possession of the first territory out of which new commonwealths were to be erected and admitted into the union. When the Articles of Confederation had been found to be insufficient, the first meeting that looked toward the formation of a more perfect

union was held at the capital of Maryland. During the War of 1812, when the national capital was in the possession of the enemy, and when a part of New England was preparing to go out of the union, Francis Scot Key, a poet and eminent jurist, reared among the beautiful hills of Frederick County, Maryland, gave to his country that thrilling national hymn, — always a power for national unity, — "The Star-Spangled Banner." Finally, when Missouri was ready for admission into the union, and the excited abolitionists — with more good intentions than sound statesmanship, or ability to interpret the powers of congress — contended that she should be admitted with restrictions, the brilliant Pinckney, trained in the old school of Maryland statesmen, demonstrated in terms unmistakably clear that in the case in hand congress had only the power to admit into an equal union of commonwealths equally sovereign; and once more the union was left unimpaired.

APPENDIX.

THE CHARTER OF MARYLAND.[1]

Charles, by the grace of God, of England, Scotland, France, and Ireland, King, Defender of the Faith, &c. To all to whom these presents shall come, GREETING.

II. Whereas our well beloved and right trusty subject Cecilius Calvert, Baron of Baltimore, in our kingdom of Ireland, son and heir of George Calvert, knight, late baron of Baltimore, in our said kingdom of Ireland, treading in the steps of his father, being animated with a laudable, and pious zeal for extending the Christian religion, and also the territories of our empire, hath humbly besought leave of us, that he may transport, by his own industry and expense, a numerous colony of the English nation, to a certain region, herein after described, in a country hitherto uncultivated, in the parts of America, and partly occupied by savages, having no knowledge of the Divine Being, and that all that region, with some certain privileges and jurisdictions, appertaining unto the wholesome government and state of his colony and region aforesaid, may by our royal highness be given, granted, and confirmed unto him and his heirs.

III. Know ye therefore, that We, encouraging with our royal favor, the pious and noble purpose of the aforesaid barons of Baltimore, of our special grace, certain knowledge, and mere motion, have given, granted, and confirmed, and by this our present charter, for us, our heirs, and successors, do give, grant, and confirm, unto the aforesaid Cecilius, now baron of Baltimore, his heirs, and assigns, all that part of the Peninsula, or

[1] Bacon's translation from the Latin; for the Latin see Proceedings of the Council, 1636 to 1667, pp. 3–12.

Chersonese, lying in the parts of America, between the ocean on the east, and the bay of Chesapeake on the west, divided from the residue thereof by a right line drawn from the promontory, or head-land, called Watkin's Point, situate upon the bay aforesaid, near the river Wighco, on the west, unto the main ocean on the east; and between that boundary on the south, unto that part of the bay of Delaware on the north, which lieth under the fortieth degree of north latitude from the equinoctial, where New England is terminated: and all the tract of that land within the metes underwritten (that is to say) passing from the said bay, called Delaware bay, in a right line, by the degree aforesaid, unto the true meridian of the first fountain of the river Potomac, thence verging toward the south, unto the further bank of the said river, and following the same on the west and south, unto a certain place called Cinquack, situate near the mouth of the said river, where it disembogues into the aforesaid bay of Chesapeake, and thence by the shortest line unto the aforesaid promontory or place, called Watkin's Point; so that the whole tract of land, divided by the line aforesaid, between the main ocean and Watkin's Point, unto the promontory called Cape Charles, and every the appendages thereof, may entirely remain excepted for ever to us, our heirs, and successors.

IV. Also We do grant, and likewise confirm unto the said baron of Baltimore, his heirs, and assigns, all islands and islets within the limits aforesaid, all and singular the islands and islets, from the eastern shore of the aforesaid region, towards the east, which have been, or shall be formed in the sea, situate within ten marine leagues from the said shore; with all and singular the ports, harbors, bays, rivers, and straits belonging to the region or islands aforesaid, and all the soil, plains, woods, mountains, marshes, lakes, rivers, bays, and straits, situate, or being within the metes, bounds, and limits aforesaid, with the fishings of every kind of fish, as well of whales, sturgeons, and other royal fish, as of other fish in the sea, bays, straits, or rivers, within the premises, and the fish there taken: and moreover all veins, mines, and quarries, as well opened as

hidden, already found, or that shall be found within the region, islands, or limits aforesaid, of gold, silver, gems, and precious stones, and any other whatsoever, whether they be of stones, or metals, or of any other thing, or matter whatsoever: and furthermore the patronages and advowsons of all churches which (with the increasing worship and religion of Christ) within the said region, islands, islets, and limits aforesaid, hereafter shall happen to be built, together with license and faculty of erecting and founding churches, chapels, and places of worship, in convenient and suitable places, within the premises, and of causing the same to be dedicated and consecrated according to the ecclesiastical laws of our kingdom of England,[1] with all, and singular such, and as ample rights, jurisdictions, privileges, prerogatives, royalties, liberties, immunities, and royal rights, and temporal franchises whatsoever, as well by sea as by land, within the region, islands, islets, and limits aforesaid, to be had, exercised, used, and enjoyed, as any bishop of Durham, within the bishopric or county palatine of Durham, in our kingdom of England, ever heretofore hath had, held, used, or enjoyed, or of right could, or ought to have, hold, use, or enjoy.

V. And We do by these presents, for us, our heirs and successors, make, create, and constitute him, the now baron of Baltimore, and his heirs, the true and absolute lords and proprietaries of the region aforesaid, and of all other the premises (except the before excepted) saving always the faith and allegiance and sovereign dominion due to us, our heirs, and successors; to have, hold, possess, and enjoy the aforesaid region, islands, islets, and other the premises, unto the aforesaid now baron of Baltimore, and to his heirs and assigns, to the sole and proper behoof and use of him, the now baron of Baltimore, his heirs and assigns, for ever. To hold of us, our heirs and successors, kings of England, as of our castle of Windsor, in our county of Berks, in free and common socage, by fealty only for all services, and not *in capite*, nor by knight's

[1] See Bozman, Vol. II, p. 11.

service, yielding therefor unto us, our heirs and successors two Indian arrows of those parts, to be delivered at the said castle of Windsor, every year, on Tuesday in Easter-week: and also the fifth part of all gold and silver ore, which shall happen from time to time, to be found within the aforesaid limits.

VI. Now, that the aforesaid region, thus by us granted and described, may be eminently distinguished above all other regions of that territory, and decorated with more ample titles, know ye, that We, of our more special grace, certain knowledge, and mere motion, have thought fit that the said region and islands be erected into a province, as out of the plenitude of our royal power and prerogative, We do, for us, our heirs and successors, erect and incorporate the same into a province, and nominate the same MARYLAND, by which name We will that it shall from henceforth be called.

VII. And forasmuch as We have above made and ordained the aforesaid now baron of Baltimore, the true lord and proprietary of the whole province aforesaid, know ye therefore further, that We, for us, our heirs and successors, do grant unto the said now baron, (in whose fidelity, prudence, justice, and provident circumspection of mind, We repose the greatest confidence) and to his heirs, for the good and happy government of the said province, free, full, and absolute power, by the tenor of these presents, to ordain, make, and enact laws, of what kind soever, according to their sound discretions, whether relating to the public state of the said province, or the private utility of individuals, of and with the advice, assent, and approbation of the freemen of the same province, or of the greater part of them, or of their delegates or deputies, whom we will shall be called together for the framing of laws, when, and as often as need shall require, by the aforesaid now baron of Baltimore, and his heirs, and in the form which shall seem best to him or them, and the same to publish under the seal of the aforesaid now baron of Baltimore, and his heirs, and duly to execute the same upon all persons, for the time being, within the aforesaid province, and the limits thereof, or under his or their government and power, in sailing toward Maryland, or thence

returning, outward-bound, either to England, or elsewhere, whether to any other part of our, or of any foreign dominions, wheresoever established, by the imposition of fines, imprisonment, and other punishment whatsoever; even if it be necessary, and the quality of the offence require it, by privation of member, or life, by him the aforesaid now baron of Baltimore, and his heirs, or by his or their deputy, lieutenant, judges, justices, magistrates, officers, and ministers, to be constituted and appointed according to the tenor and true intent of these presents, and to constitute and ordain judges, justices, magistrates and officers, of what kind, for what cause, and with what power soever, within that land, and the sea of those parts, and in such form as to the said now baron of Baltimore, or his heirs, shall seem most fitting: and also to remit, release, pardon, and abolish, all crimes and offences whatsoever against such laws, whether before, or after judgment passed; and to do all and singular other things belonging to the completion of justice, and to courts, pretorian judicatories, and tribunals, judicial forms and modes of proceeding, although express mention thereof in these presents be not made; and, by judges by them delegated, to award process, hold pleas, and determine in those courts, pretorian judicatories, and tribunals, in all actions, suits, cases, and matters whatsoever, as well criminal as personal, real and mixed, and pretorian: which said laws, so to be published as above said, We will, enjoin, charge, and command, to be most absolute and firm in law, and to be kept in those parts by all the subjects and liege-men of us, our heirs and successors, so far as they concern them, and to be inviolably observed under the penalties therein expressed, or to be expressed. So nevertheless, that the laws aforesaid be consonant to reason, and be not repugnant or contrary, but (so far as conveniently may be) agreeable to the laws, statutes, customs, and rights of this our kingdom of England.

VIII. And forasmuch as, in the government of so great a province, sudden accidents may frequently happen, to which it will be necessary to apply a remedy, before the freeholders of the said province, their delegates, or deputies, can be called

together for the framing of laws; neither will it be fit that so great a number of people should immediately, on such emergent occasion, be called together, We, therefore, for the better government of so great a province, do will and ordain, and by these presents, for us, our heirs and successors, do grant unto the said now baron of Baltimore, and to his heirs, that the aforesaid now baron of Baltimore, and his heirs, by themselves, or by their magistrates and officers, thereunto duly to be constituted as aforesaid, may, and can make and constitute fit and wholesome ordinances from time to time, to be kept and observed within the province aforesaid, as well for the conservation of the peace, as for the better government of the people inhabiting therein, and publicly to notify the same to all persons whom the same in any wise do or may affect. Which ordinances We will to be inviolably observed within the said province, under the pains to be expressed in the same. So that the said ordinances be consonant to reason, and be not repugnant nor contrary, but (so far as conveniently may be done) agreeable to the laws, statutes, or rights of our kingdom of England: and so that the same ordinances do not, in any sort, extend to oblige, bind, charge, or take away the right or interest of any person or persons, of, or in member, life, freehold, goods or chattels.

IX. Furthermore, that the new colony may more happily increase by a multitude of people resorting thither, and at the same time may be more firmly secured from the incursions of savages, or of other enemies, pirates, and ravagers: We, therefore, for us, our heirs and successors, do by these presents give and grant power, license, and liberty, to all the liege-men and subjects, present and future, of us, our heirs and successors, except such to whom it shall be expressly forbidden, to transport themselves and their families to the said province, with fitting vessels, and suitable provisions, and therein to settle, dwell, and inhabit; and to build and fortify castles, forts, and other places of strength, at the appointment of the aforesaid now baron of Baltimore, and his heirs, for the public and their own defence; the statute of fugitives, or any other what-

soever to the contrary of the premises in any wise notwithstanding.

X. We will also, and of our more abundant grace, for us, our heirs and successors, do firmly charge, constitute, ordain, and command, that the said province be of our allegiance; and that all and singular the subjects and liege-men of us, our heirs and successors, transplanted, or hereafter to be transplanted into the province aforesaid, and the children of them, and of others their descendants, whether already born there, or hereafter to be born, be and shall be natives and liege-men of us, our heirs and successors, of our kingdom of England and Ireland; and in all things shall be held, treated, reputed, and esteemed as the faithful liege-men of us, and our heirs and successors, born within our kingdom of England; also lands, tenements, revenues, services, and other hereditaments whatsoever, within our kingdom of England, and other our dominions, to inherit, or otherwise purchase, receive, take, have, hold, buy, and possess, and the same to use and enjoy, and the same to give, sell, alien and bequeath; and likewise all privileges, franchises and liberties of this our kingdom of England, freely, quietly, and peaceably to have and possess, and the same may use and enjoy in the same manner as our liege-men born, or to be born within our said kingdom of England, without impediment, molestation, vexation, impeachment, or grievance of us, or any of our heirs or successors; any statute, act, ordinance, or provision to the contrary thereof, notwithstanding.

XI. Furthermore, that our subjects may be incited to undertake this expedition with a ready and cheerful mind: know ye, that We, of our special grace, certain knowledge, and mere motion, do, by the tenor of these presents, give and grant, as well to the aforesaid baron of Baltimore, and to his heirs, as to all other persons who shall from time to time repair to the said province, either for the sake of inhabiting, or of trading with the inhabitants of the province aforesaid, full license to ship and lade in any the ports of us, our heirs and successors, all and singular their goods, as well movable, as immovable, wares and merchandises, likewise grain of what sort soever,

and other things whatsoever necessary for food and clothing, by the laws and statutes of our kingdoms and dominions, not prohibited to be transported out of the said kingdoms; and the same to transport, by themselves, or their servants or assigns, into the said province, without the impediment or molestation of us, our heirs or successors, or of any officers of us, our heirs or successors, (saving unto us, our heirs and successors, the impositions, subsidies, customs, and other dues payable for the same goods and merchandises) any statute, act, ordinance, or other thing whatsoever to the contrary notwithstanding.

XII. But because, that in so remote a region, placed among so many barbarous nations, the incursions as well of the barbarians themselves, as of other enemies, pirates and ravagers, probably will be feared, therefore We have given, and for us, our heirs, and successors, do give by these presents as full and unrestrained power, as any captain-general of an army ever hath had unto the aforesaid now baron of Baltimore, and to his heirs and assigns, by themselves, or by their captains, or other officers, to summon to their standards, and to array all men, of whatsoever condition, or wheresoever born, for the time being, in the said province of Maryland, to wage war, and to pursue, even beyond the limits of their province, the enemies and ravagers aforesaid, infesting those parts by land and by sea, and (if God shall grant it) to vanquish and captivate them, and the captives to put to death, or, according to their discretion, to save, and to do all other and singular the things which appertain, or have been accustomed to appertain unto the authority and office of a captain-general of an army.

XIII. We also will, and by this our charter, do give unto the aforesaid now baron of Baltimore, and to his heirs and assigns, power, liberty, and authority, that, in case of rebellion, sudden tumult, or sedition, if any (which God forbid) should happen to arise, whether upon land within the province aforesaid, or upon the high sea in making a voyage to the said province of Maryland, or in returning thence, they may, by themselves, or by their captains, or other officers, thereunto deputed under their seals (to whom We, for us, our heirs and

successors, by these presents, do give and grant the fullest power and authority) exercise martial law as freely, and in as ample manner and form, as any captain-general of an army, by virtue of his office may, or hath accustomed to use the same, against the seditious authors of innovations in those parts, withdrawing themselves from the government of him or them, refusing to serve in war, flying over to the enemy, exceeding their leave of absence, deserters, or otherwise howsoever offending against the rule, law, or discipline of war.

XIV. Moreover, lest in so remote and far distant a region, every access to honors and dignities may seem to be precluded, and utterly barred, to men well born, who are preparing to engage in the present expedition, and desirous of deserving well, both in peace and war, of us, and our kingdoms; for this cause, We, for us, our heirs and successors, do give free and plenary power to the aforesaid now baron of Baltimore, and to his heirs and assigns, to confer favors, rewards, and honors, upon such subjects, inhabiting within the province aforesaid, as shall be well deserving, and to adorn them with whatsoever titles and dignities they shall appoint; (so that they be not such as are now used in England) also to erect and incorporate towns into boroughs, and boroughs into cities, with suitable privileges and immunities, according to the merits of the inhabitants, and convenience of the places; and to do all and singular other things in the premises, which to him or them shall seem fitting and convenient; even although they shall be such as, in their own nature, require a more special commandment and warrant than in these presents may be expressed.

XV. We will also, and by these presents do, for us, our heirs and successors, give and grant license by this our charter, unto the aforesaid now baron of Baltimore, his heirs and assigns, and to all persons whatsoever, who are, or shall be residents and inhabitants of the province aforesaid, freely to import and unlade, by themselves, their servants, factors or assigns, all wares and merchandises whatsoever, which shall be collected out of the fruits and commodities of the said province, whether the product of the land or the sea, into any the ports whatso-

ever of us, our heirs and successors, of England or Ireland, or otherwise to dispose of the same there; and, if need be, within one year, to be computed immediately from the time of unlading thereof, to lade the same merchandises again, in the same, or other ships, and to export the same to any other countries they shall think proper, whether belonging to us, or any foreign power which shall be in amity with us, our heirs or successors: provided always, that they be bound to pay for the same to us, our heirs and successors, such customs and impositions, subsidies and taxes, as our other subjects of our kingdom of England, for the time being, shall be bound to pay, beyond which we will that the inhabitants of the aforesaid province of the said land, called Maryland, shall not be burdened.

XVI. And furthermore, of our more ample special grace, and of our certain knowledge, and mere motion, We do, for us, our heirs and successors, grant unto the aforesaid now baron of Baltimore, his heirs and assigns, full and absolute power and authority to make, erect, and constitute, within the province of Maryland, and the islands and islets aforesaid, such, and so many sea-ports, harbors, creeks, and other places of unlading and discharge of goods and merchandises out of ships, boats, and other vessels, and of lading in the same, and in so many, and such places, and with such rights, jurisdictions, liberties, and privileges, unto such ports respecting, as to him or them shall seem most expedient: And, that all and every the ships, boats, and other vessels whatsoever, coming to, or going from the province aforesaid, for the sake of merchandising, shall be laden and unladen at such ports only as shall be so erected and constituted by the said now baron of Baltimore, his heirs and assigns, any usage, custom, or any other thing whatsoever to the contrary notwithstanding. Saving always to us, our heirs and successors, and to all the subjects of our kingdoms of England and Ireland, of us, our heirs and successors, the liberty of fishing for sea-fish, as well in the sea, bays, straits, and navigable rivers, as in the harbors, bays, and creeks of the province aforesaid: and the privilege of salting and drying fish on the shores of the same province; and, for that cause, to cut down

and take hedging-wood and twigs there growing, and to build huts and cabins, necessary in this behalf, in the same manner as heretofore they reasonably might, or have used to do. Which liberties and privileges, the said subjects of us, our heirs and successors, shall enjoy, without notable damage or injury in any wise to be done to the aforesaid now baron of Baltimore, his heirs or assigns, or to the residents and inhabitants of the same province in the ports, creeks, and shores aforesaid, and especially in the woods and trees there growing. And if any person shall do damage or injury of this kind, he shall incur the peril and pain of the heavy displeasure of us, our heirs and successors, and of the due chastisement of the laws, besides making satisfaction.

XVII. Moreover, We will, appoint, and ordain, and by these presents, for us, our heirs and successors, do grant unto the aforesaid now baron of Baltimore, his heirs and assigns, that the same baron of Baltimore, his heirs and assigns, from time to time, forever, shall have, and enjoy the taxes and subsidies payable, or arising within the ports, harbors, and other creeks and places aforesaid, within the province aforesaid, for wares bought and sold, and things there to be laden, or unladen, to be reasonably assessed by them, and the people there as aforesaid, on emergent occasion; to whom we grant power by these presents, for us, our heirs and successors, to assess and impose the said taxes and subsidies there, upon just cause, and in due proportion.

XVIII. And furthermore, of our special grace, and certain knowledge, and mere motion, We have given, granted, and confirmed, and by these presents, for us, our heirs, and successors, do give, grant, and confirm, unto the aforesaid now baron of Baltimore, his heirs and assigns, full and absolute license, power, and authority, that he, the aforesaid now baron of Baltimore, his heirs and assigns, from time to time hereafter, for ever, may and can, at his or their will and pleasure, assign, alien, grant, demise, or enfeoff so many, such, and proportionate parts and parcels of the premises, to any person or persons willing to purchase the same, as they shall think convenient,

to have and to hold to the same person or persons willing to take or purchase the same, and his and their heirs and assigns, in fee-simple or fee-tail, or for term of life, lives, or years; to hold of the aforesaid now baron of Baltimore, his heirs and assigns, by so many, such, and so great services, customs and rents of this kind, as to the same now baron of Baltimore, his heirs and assigns, shall seem fit and agreeable, and not immediately of us, our heirs or successors. And we do give, and by these presents, for us, our heirs and successors, do grant to the same person and persons, and to each and every of them, license, authority, and power, that such person and persons, may take the premises, or any parcel thereof, of the aforesaid now baron of Baltimore, his heirs and assigns, and hold the same to them and their assigns, or their heirs, of the aforesaid baron of Baltimore, his heirs and assigns, of what estate of inheritance soever, in fee-simple or fee-tail, or otherwise, as to them and the now baron of Baltimore, his heirs and assigns, shall seem expedient; the statute made in the parliament of lord Edward, son of king Henry, late king of England, our progenitor, commonly called the "Statute Quia Emptores Terrarum," heretofore published in our kingdom of England, or any other statute, act, ordinance, usage, law, or custom, or any other thing, cause or matter, to the contrary thereof, heretofore had, done, published, ordained or provided to the contrary thereof notwithstanding.

XIX. We, also, by these presents, do give and grant license to the same baron of Baltimore, and to his heirs, to erect any parcels of land within the province aforesaid, into manors, and in every of those manors, to have and to hold a court-baron, and all things which to a court-baron do belong; and to have and to keep view of frank-pledge, for the conservation of the peace and better government of those parts, by themselves and their stewards, or by the lords, for the time being to be deputed, of other of those manors when they shall be constituted, and in the same to exercise all things to the view of frank-pledge belonging.

XX. And further We will, and do, by these presents, for us, our heirs and successors, covenant and grant to, and with the

aforesaid now baron of Baltimore, his heirs and assigns, that We, our heirs and successors, at no time hereafter, will impose, or make or cause to be imposed, any impositions, customs, or other taxations, quotas or contributions whatsoever, in or upon the residents or inhabitants of the province aforesaid for their goods, lands, or tenements within the same province, or upon any tenements, lands, goods or chattels within the province aforesaid, or in or upon any goods or merchandises within the province aforesaid, or within the ports or harbors of the said province, to be laden or unladen: And We will and do, for us, our heirs and successors, enjoin and command that this our declaration shall, from time to time, be received and allowed in all our courts and pretorian judicatories, and before all the judges whatsoever of us, our heirs and successors, for a sufficient and lawful discharge, payment, and acquittance thereof, charging all and singular the officers and ministers of us, our heirs and successors, and enjoining them, under our heavy displeasure, that they do not at any time presume to attempt any thing to the contrary of the premises, or that may in any wise contravene the same, but that they, at all times, as is fitting, do aid and assist the aforesaid now baron of Baltimore, and his heirs, and the aforesaid inhabitants and merchants of the province of Maryland aforesaid, and their servants and ministers, factors and assigns, in the fullest use and enjoyment of this our charter.

XXI. And furthermore We will, and by these presents, for us, our heirs and successors, do grant unto the aforesaid now baron of Baltimore, his heirs and assigns, and to the freeholders and inhabitants of the said province, both present and to come, and to every of them, that the said province, and the freeholders or inhabitants of the said colony or country, shall not henceforth be held or reputed a member or part of the land of Virginia, or of any other colony already transported, or hereafter to be transported, or be dependent on the same, or subordinate in any kind of government, from which We do separate both the said province, and inhabitants thereof, and by these presents do will to be distinct, and that they may be immedi-

ately subject to our crown of England, and dependent on the same for ever.

XXII. And if, peradventure, hereafter it may happen, that any doubts or questions should arise concerning the true sense and meaning of any word, clause, or sentence, contained in this our present charter, We will, charge and command, that interpretation to be applied, always, and in all things, and in all our courts and judicatories whatsoever, to obtain which shall be judged to be the more beneficial, profitable, and favorable to the aforesaid now baron of Baltimore, his heirs and assigns: provided always, that no interpretation thereof be made, whereby God's holy and true Christian religion, or the allegiance due to us, our heirs and successors, may in any wise suffer by change, prejudice, or diminution; although express mention be not made in these presents of the true yearly value or certainty of the premises, or of any part thereof, or of other gifts and grants made by us, our heirs and predecessors, unto the said now Lord Baltimore, or any statute, act, ordinance, provision, proclamation or restraint, heretofore had, made, published, or ordained or provided, or any other thing, cause, or matter whatsoever, to the contrary thereof in any wise notwithstanding.

XXIII. In witness whereof We have caused these our letters to be made patent. Witness ourself at Westminster, the twentieth day of June, in the eighth year of our reign.

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